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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV03–905–2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Removing All Seeded Grapefruit Regulations, Relaxation of Grade Requirements for Valencia and Other Late Type Oranges, and Removing Quality and Size Regulations on Imported Seeded Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule removing the regulations for seeded grapefruit under the Florida citrus marketing order and for seeded grapefruit imported into the United States. The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida (order) and is administered locally by the Citrus Administrative Committee (committee). The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. Production of seeded grapefruit in Florida has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also continues in effect a relaxation of the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. The volume remaining at the end of the season is small and has difficulty meeting grade requirements. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

EFFECTIVE DATE: February 5, 2004.

FOR FURTHER INFORMATION CONTACT: William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule continues in effect the removal of regulations for seeded grapefruit under the order for Florida citrus. Thus, handlers of seeded grapefruit are no longer subject to minimum grade, size, assessment, and reporting requirements under the order. Production has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also continues in effect a relaxation in the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. For the purposes of this final rule, the term ''domestic shipments'' includes shipments between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States. The volume of fruit remaining at the end of the season is small and has difficultly meeting grade requirements. This rule will help the industry maximize fresh shipments and returns for Valencia and other late type oranges. These actions were unanimously recommended by the committee at its meeting on July 1, 2003.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. The grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers.

Section 905.306 of the order's rules and regulations specifies the minimum grade and size requirements for different

varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Prior to the issuance of the interim final rule, the minimum grade for domestic seeded grapefruit was a U.S. No. 1 as specified in the U.S. Standard for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784), with a minimum size of 3 12/16 inches in diameter for domestic shipments, and 3 9/16 inches for export shipments. The minimum grade for domestic Valencia and other late type oranges was a U.S. No. 1 for the season as specified in the U.S. Standard for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), with a minimum size of 2 8/16 inches in diameter for both domestic and export shipments.

Under §§ 905.51 and 905.52 of the order, the committee has authority to recommend to USDA the varieties of citrus to be regulated. This rule continues to modify § 905.306 by removing seeded grapefruit from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). The removal of seeded grapefruit from these tables has the effect of removing the grade and size requirements for seeded grapefruit under the order. Also, assessment and reporting requirements no longer apply to seeded grapefruit. In addition, this rule continues to amend Table I of § 905.306 by reducing the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31, each season.

In making its recommendation, the committee recognized that seeded grapefruit is no longer significant in terms of shipments and market share. During the 2002–03 season, only 150 cartons of seeded grapefruit were shipped to the fresh market. This is down from 4,705 cartons shipped in the 1998–99 season. Currently, shipments of seeded grapefruit represent less than .0005 percent of fresh shipments of Florida grapefruit. Seeded grapefruit production has declined as new seedless varieties have been developed and planted. Consequently, the committee determined that removing seeded grapefruit varieties from the order regulations will not have a negative impact on the grapefruit market.

In addition, this rule also continues to relax the minimum grade requirements for domestic shipments of fresh Valencia and other late oranges. The committee recommended reducing the minimum grade requirements for Valencia and other late type oranges from a U.S. No. 1 to a U.S. No. 2 external grade with a U.S. No. 1 internal grade from June 15, 2004, to July 31, 2004, and during the same period of each season thereafter. Valencia and late type oranges have difficulty meeting grade requirements late in the season. This is usually due to regreening, which is considered a defect under the U.S. Standard for Grades of Oranges.

At the end of the season growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes that permitting the shipment of a U.S. No. 2 external grade during the specified time will help the industry maximize fresh shipments and returns for Valencia and other late type oranges. Consequently, the committee recommended that during the period June 15 to July 31 that the grade standard be lowered to U.S. No. 2 external grade with U.S. No. 1 internal grade for Valencia and other late type oranges shipped to domestic markets.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule removes the minimum size and grade requirements for seeded grapefruit under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). The minimum grade and size requirements are specified in a table in paragraph (a) of § 944.106. This rule removes the minimum grade and size requirements for imported seeded grapefruit to reflect the change made under the order for seeded grapefruit grown in Florida.

Section 8e import requirements for oranges are based on the marketing order for South Texas oranges and as such will not be impacted by this relaxation.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit and Valencia and other late type orange handlers subject to regulation under the order, approximately 11,000 producers of Florida citrus in the regulated area, and approximately 10 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2002–03 season was approximately $7.24 per 4/5-bushel carton, and total fresh shipments for the 2002–03 season are estimated at 28.3 million cartons of grapefruit. The average annual f.o.b. price for fresh Florida Valencia and other late type oranges during the 2002–03 season was approximately $6.99 per carton, and total fresh shipments are estimated at 3,669,000 cartons. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit and Valencia and other late type orange shipments. Using the average f.o.b. prices, at least 75 percent of the grapefruit and Valencia and other late type orange handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit and Valencia and other late type orange handlers may be classified as small entities. In addition, based on information from the Foreign Agricultural Service, USDA, the dollar value of imported grapefruit ranged from $902,000 in 1998 to $2,018,000 during the 2002 season. Using these numbers, all grapefruit importers may be classified as small entities. The majority of Florida grapefruit and Valencia and other late type orange producers may also be classified as small entities.

This rule continues in effect the removal of seeded grapefruit from regulation under the order. Handlers of seeded grapefruit are no longer required to meet the minimum grade and size requirements and are not subject to assessments and reporting requirements. Removing these varieties from the minimum grade and size requirements

will have no significant impact on the grapefruit market. This rule also continues in effect a reduction in the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31 each season. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. The committee unanimously recommended this action at a meeting on July 1, 2003.

During the 2002–2003 season, only 150 cartons of seeded grapefruit were shipped out of a total of 28.3 million 4/5-bushel cartons of seedless grapefruit. Production of seeded varieties has declined as newer seedless varieties have been developed and planted. Current market share and shipment levels justify removal of the order requirements for seeded grapefruit.

Valencia and late type oranges have difficulty meeting grade requirements late in the season. At the end of the season, growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes permitting the shipment of a U.S. No. 2 external grade with a minimum U.S. No. 1 internal grade from June 15 to July 31 for domestic shipments will help the industry maximize fresh shipments and returns for Valencia and other late type oranges.

This rule is expected to continue to have a positive impact on affected entities as it relaxes handling requirements. With this rule removing seeded grapefruit from the varieties regulated, handlers are able to market these varieties free from order requirements. In addition, the relaxation in grade requirements from June 15 to July 31 each season for Valencia and other late type oranges allows handlers to make additional supplies available for the fresh domestic market, and may increase returns. No additional costs are imposed on growers, handlers, and importers with this rule. The benefits derived from this change are expected to benefit both large and small entities equally.

During the period January 1 through December 31, 2002, imports of grapefruit totaled 23,246 metric tons (approximately 1,100,000 cartons). The Bahamas were the principal source, accounting for nearly 99 percent of the total. Remaining imports were supplied by Israel. Most imported grapefruit enters the United States from October through May.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the requirements for domestic seeded grapefruit shipments, this change must also be applicable to imported grapefruit. This rule removes the import requirements for seeded grapefruit. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers.

One alternative to this action was to make no changes to the order's handling regulations. However, the committee believes that seeded grapefruit varieties have no significant impact on the grapefruit market and that action should be taken to remove them from the handling regulations. In addition, the committee believes that making additional supplies of oranges available late in the season may increase returns. Therefore, the alternative of making no changes was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on September 9, 2003. A correction to this docket was published in the **Federal Register** on October 15, 2003. Copies were mailed by the committee's staff to all committee members and citrus handlers. In addition, the rule and correction were made available through the Internet by the Office of the Federal Register and USDA. The rule provided for a 60-day comment period, which ended November 10, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change as published in the **Federal Register** (68 FR 53021, September 9, 2003) and as corrected in the **Federal Register** (68 FR 59446, October 15, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Olives, Oranges.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 68 FR 53021 on September 9, 2003, and corrected at 68 FR 59446 on October 15, 2003, is adopted as a final rule without change.

Dated: December 30, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–168 Filed 1–5–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE202, Special Condition 23–142–SC]

Special Conditions; Polskie Zaklady Lotnicze (PZL)–Mielec, Model M28 05; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Polskie Zaklady Lotnicze (PZL)–Mielec, for a Type Certificate for the M28 05 Skytruck airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays and Attitude Heading Reference System (AHRS) for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is December 18, 2003. Comments must be received on or before February 5, 2004.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE202, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE202. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and, thus, delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE202.'' The postcard will be date stamped and returned to the commenter.

Background

HIRF protection is recognized as a Certification Review Item (CRI) under the Bilateral Aviation Agreement in place between the FAA and the Polish Certification Authority, or CAO. As part of the FAA validation process for issuance of a Type Certificate in the United States for foreign applicants, the FAA is issuing these special conditions to address special certification review items for novel and unusual features of the PZL–Mielec M28 05 Skytruck. The proposed type design incorporates novel or unusual design features such as an EFIS and AHRS that are vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17 for TC, PZL–Mielec, must show that the M28 05 Skytruck aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the M28 05 Skytruck: 14 CFR part 23, dated February 1, 1965, as amended through Amendment 23–42, effective February 4, 1991; 14 CFR part 34, dated September 10, 1990, as amended through Amendment 34–1, effective July 31, 1995; and 14 CFR part 36, dated December 1, 1969, as amended through amendment in effect on the date of issuance of the U.S. type certificate (currently Amendment 36–21, effective December 28, 1995); exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

PZL–Mielec plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was

not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

*The field strengths are expressed in terms of peak root-mean-square (rms) values.

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to PZL–Mielec in Poland. Should PZL–Mielec apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the PZL–Mielec M28 05 Skytruck airplane.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on December 18, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–240 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM272; Special Conditions No. 25–256–SC]

Special Conditions: Airbus Model A300 B4–600, –B4–600R, –F4–600R Series Airplanes; and Model A310–200 and –300 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Airbus model A300 B4–600, –B4–600R, and –F4–600R (collectively called A300–600) series airplanes; and A310–200 and –300 series airplanes modified by Canard Aerospace Corporation. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of Honeywell Air Data Inertial Reference Units (ADIRU) that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 29, 2003. Comments must be received on or before February 5, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM272, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM272.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 14, 2003, Canard Aerospace Corporation, 13050 Pioneer Trail, Eden Prairie, Minnesota 55347, applied for a Supplemental Type Certificate (STC) to modify Airbus model A300–600 series; and A310–200, –300 series airplanes approved under Type Certificate No. A35EU. The Airbus A300 and A310 series airplanes are a large transport category airplane. The wide body twin-engine, twin-aisle aircraft family offers configurations for 220 to 360 seats or freighter versions. These airplanes have maximum take-off weights of up to 378,530 pounds and are powered by either General Electric CF6–80C2 or Pratt & Whitney JT9D/PW4000 turbofan engines. The modification incorporates the installation of the Honeywell Air Data Inertial Reference Units (ADIRU) to replace aging Inertial Reference Units (IRU). The ADIRU provide flight critical functions by determining the airplane's attitude, heading, and position. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Canard Aerospace must show the Airbus A300 and A310 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A35EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the Airbus A300–600 series airplanes includes 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–74; 14 CFR part 36 effective December 1, 1969, including Amendments 36–1 through 36–22. The certification basis for the modified Airbus A310–200 and –300 series airplanes includes 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–54; 14 CFR part 36 effective December 1, 1969, including Amendments 36–1 through 36–12. In addition to the basis cited for all of the above models, the certification basis includes special conditions, exceptions, and variations noted in Type Certificate Data Sheet (TCDS) A35EU.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Airbus model A300–600 series, and A310–200 and –300 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special

conditions, the Airbus model A300–600 series, and A310–200 and –300 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Canard Aerospace apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A35EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Airbus model A300–600 series, and A310–200 and –300 series airplanes modified by Canard Aerospace will incorporate new Honeywell Air Data Inertial Reference Units (ADIRU) that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Airbus model A300 and A310 series airplanes modified by Canard Aerospace. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100kHz–500 kHz	50	50
500kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz –8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

*The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Airbus model A300–600 series, and A310–200 and –300 series airplanes modified by Canard Aerospace Corporation. Should Canard Aerospace apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A35EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Airbus model A300–600 series, and A310–200 and –300 series airplanes modified by Canard Aerospace. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Airbus model A300–600 series, A310–200 series, and A310–300 series airplanes modified by Canard Aerospace Corporation.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields*

(HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 30, 2003.

Mike Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–239 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–01–AD; Amendment 39–13422; AD 2004–01–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines. This amendment requires on JT9D–7R4 series turbofan engines with steel fan cases, replacement of the existing one-piece fan case shield with a thicker four-piece fan case shield and would add four fan case shield supports. This amendment results from two uncontained full fan blade fracture events that resulted in penetration of the steel fan case and fan case shield. We are issuing this AD to prevent uncontained fan blade failures, resulting in damage to the airplane.

DATES: Effective February 10, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7750; fax (860) 565–1605. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that applies to PW JT9D–7R4 series turbofan engines was published in the **Federal Register** on April 23, 2003 (68 FR 19962). That action proposed to require on JT9D–7R4 series turbofan engines with steel fan cases, replacement of the existing one-piece fan case shield with a thicker four-piece fan case shield and would add four fan case shield supports.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Update Material Cost

Two commenters state that the material cost in the economic analysis published with the proposed AD is incorrect. They note that since the notice of proposed rulemaking (NPRM) was issued, a subsequent service bulletin (SB) revision was issued that quoted a higher price for the containment shield kit. The revised SB also included a reduction in the number of work hours to do the replacements.

The FAA agrees. We have revised the economic analysis in this AD.

Request To Update Service Bulletin Revision and Date

One commenter, the manufacturer, recommends that the four-piece fan cases, part numbers (P/Ns) 815132 and 821545, be installed using the information found in PW SB JT9D–7R4–72–583, Revision 1, and PW SB JT9D–7R4–72–584, Revision 1, both dated September 10, 2003, instead of the original release of each SB, dated December 12, 2002. The manufacturer states that the SB revisions require changing the position of the shield attachment hardware and the assembly sequence to provide a better fit between the washer and the containment shield bolthole.

The FAA agrees that these SB revisions enhance the installation process. Removal of the old containment shield, and proper installation of the new containment shield is the purpose of this AD. Since we are referencing the SBs for additional information only and are not incorporating those documents by reference, we have removed the date from the references in paragraphs (a), (b), and (c) in the AD. Removing the dates will allow the operator to refer to the latest revisions of the SBs.

Request To Comply at Next Heavy Maintenance vs. Repair

One commenter believes the intent of this AD is to incorporate the new fan case shield assembly at the next heavy maintenance, which would involve separation of the ''B'' flange. During a less invasive visit (repair), the containment shields are not normally accessed and would cause an incremental cost increase.

The FAA agrees. The purpose of this AD is to replace the containment shield the next time the fan case module is accessed, which would involve the separation of the ''B'' flange. The FAA has changed the compliance time to reference ''shop visit'' and added Paragraph (d) to provide a definition of ''shop visit'' that makes this intent clear. As a result, the remaining paragraphs are changed from (d) and (e) to (d), (e), (f), and (g).

Request for Clarification of Engine Overhaul vs. Shop Visit

The same commenter expresses a concern about the ambiguous definition of engine overhaul and suggests that a simplified clarification might further reduce compliance times. The commenter also requests further clarification that the intent is a shop visit for heavy maintenance or overhaul.

The FAA agrees. Since the AD intends to mandate the replacement of the containment shield during the next time the engine is serviced for an in-shop overhaul, and not during on-wing replacement, the compliance statement is revised by replacing ''engine overhaul where access to the fan case aft containment area is available'' with ''shop visit''. The definition of shop visit is added in a new paragraph (d) of the AD. As a result, the remaining paragraphs are changed from (d) and (e) to (d), (e), (f), and (g).

Request To Return to Pre-Compliance Build Standard To Utilize Spare Parts

The same commenter asks that the AD include a provision to allow the removal of the four-piece fan case shield for those engines on which the improved containment has already been installed. The commenter seeks this provision to use up inventoried spare parts, but acknowledges that the final compliance date of December 31, 2012 must be met.

The FAA disagrees. Compliance with this AD is required at the next shop visit, which is defined as the separation of the B-flange except to replace fan case assemblies for rub strip repairs. Compliance is required at each shop visit. The FAA has included a compliance end-date of December 31, 2012, only to ensure that those engines, if there are any, that do not see a shop visit before that date have the improved containment shields installed. This compliance program establishes an acceptable level of safety based on the FAA's review of the entire fleet's exposure to the described unsafe condition, an analysis that does not contemplate the removal of the required improvements to the containment shield once installed.

Affect on Existing AD 87–23–05R1

Although the FAA proposed that this AD would supersede AD 87–23–05R1, after further review and careful consideration of all the comments received, the FAA has determined to publish this AD as a new AD and leave AD 87–23–05R1 in place. Superseding AD 87–23–05R1 would have had the effect of removing the requirements for installing P/N 802096 on engines with titanium fan case assemblies and for modifying the fan case assemblies by installing ring segments, which are both critical to the safety of the containment shields. Removal of these requirements would not meet the intent of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 309 JT9D–7R4 series turbofan engines with steel fan cases, of the affected design in the worldwide fleet. The FAA estimates that 155 engines installed on PW JT9D–7R4 series turbofan engines of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 1 work hour per engine to perform the actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $7,600 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $1,188,075.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–01–08 Pratt & Whitney: Amendment 39–13422. Docket No. 2003–NE–01–AD.

Applicability: This airworthiness directive (AD) applies to Pratt & Whitney (PW) JT9D–7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 turbofan engines with steel fan cases. These engines are installed on, but not limited to, Airbus Industrie A300 and A310, and Boeing 747 and 767 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required at the next shop visit, but no later than December 31, 2012, unless already done.

To prevent uncontained fan blade failures, resulting in damage to the airplane, do the following:

(a) For PW JT9D–7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, and –7R4H1 turbofan engines with steel fan cases that have PW service bulletin (SB) 72–312 incorporated, replace fan case shield part number (P/N) 802095 with the four-piece fan case shield and install four fan case shield supports. Information on replacing fan case shields and installing fan case shield supports can be found in PW SB JT9D–7R4–72–583.

(b) For PW JT9D–7R4G2 turbofan engines with steel fan cases that have PW SB 72–88 and PW SB 72–311 incorporated, replace fan case shield P/N 802094 with the four-piece fan case shield and install four fan case shield supports. Information on replacing fan case shields and installing fan case shield supports can be found in Part A of PW SB JT9D–7R4–72–584.

(c) For PW JT9D–7R4G2 turbofan engines with steel fan cases that do not have PW SB 72–88 incorporated, but have PW SB 72–311 incorporated, replace fan case shield P/N 802094 with the four-piece fan case shield and install four fan case shield supports. Information on replacing fan case shields and installing fan case shield supports can be found in Part B of PW SB JT9D–7R4–72–584.

Definitions

(d) For the purpose of this AD, a shop visit is defined as separation of the B-flange during in-shop maintenance. Separation of the B-flange in order to replace fan case assemblies for rub strip repairs is not considered a shop visit.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on February 10, 2004.

Issued in Burlington, Massachusetts, on December 29, 2003.

Robert E. Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–45 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–26–AD; Amendment 39–13409; AD 2003–26–11]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80E1A2 and –80E1A4 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–80E1A2 and –80E1A4 turbofan engines with left vertical link bolts part number (P/N) 1304M26P02 installed, and pylon attachment bolts originally torqued to 450–500 lb ft. This AD requires reducing the torque of pylon attachment bolts, and replacing left vertical link bolts with life-limited serialized bolts. This AD results from revised analyses by the airframe manufacturer of loads on the forward engine mount. We are issuing this AD to prevent engine separation that could result from a reduction of engine mount structural integrity due to failure of pylon attachment bolts or vertical link bolts.

DATES: Effective February 5, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 5, 2004.

We must receive any comments on this AD by March 8, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–26–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information referenced in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

Airbus Industrie has revised their analyses of Airbus A330–200 and A330–300 airplane forward engine mount loads. The revised analyses predict higher loads than the loads used in the original certification of the engine. The increased loads, in combination with the originally specified pylon attachment bolt torque, result in a reduced low-cycle-fatigue (LCF) life capability for the pylon attachment bolts. The increased load also results in a reduced LCF life capability for the left vertical link bolts. This AD requires reducing the torque of pylon attachment bolts, and replacing left vertical link bolts with life-limited serialized bolts. These actions restore the forward engine mount structural integrity.

Relevant Service Information

We have reviewed and approved the technical contents of GE Alert Service Bulletin No. CF6–80E1 S/B 72–A0184, Revision 1, dated February 26, 2002, that describes procedures for reducing the torque on CF6–80E1A2 and –80E1A4 turbofan engine pylon attachment bolts.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these GE CF6–80E1A2 and –80E1A4 turbofan engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other GE CF6–80E1A2 and –80E1A4 turbofan engines of the same type design. We are issuing this AD to prevent engine separation that could result from a reduction of engine mount structural integrity due to failure of pylon attachment bolts or vertical link bolts. This AD requires reducing the torque of pylon attachment bolts, and replacing left vertical link bolts with life-limited serialized bolts. You must use the service information described previously to perform the bolt torque reduction required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of GE CF6–80E1A2 and –80E1A4 turbofan engines, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–26–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on

whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–26–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–26–11 General Electric Company: Amendment 39–13409. Docket No. 2003–NE–26–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 5, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80E1A2 and –80E1A4 turbofan engines with left vertical link bolts part number (P/N) 1304M26P02 installed, and pylon attachment bolts originally torqued to 450–500 lb ft. These engines are installed on, but not limited to Airbus Industrie A330–200 and A330–300 airplanes.

Unsafe Condition

(d) This AD is prompted by revised analyses of forward engine mount loads by the airframe manufacturer. We are issuing this AD to prevent engine separation that could result from a reduction of engine mount structural integrity due to failure of pylon attachment bolts or vertical link bolts.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance cycles and times specified unless the actions have already been done.

Torque Reduction of Pylon Attachment Bolts

(f) For CF6–80E1A2 engines, reduce the pylon attachment bolt torque on each of the five bolts to 400–450 lb ft, before exceeding 7,160 cycles-since-new (CSN) or before exceeding 5,120 cycles-since-last-installation (CSLI), whichever is later. Use paragraph 3. of Accomplishment Instructions of Alert Service Bulletin (ASB) No. CF6–80E1 S/B 72–A0184, Revision 1, dated February 26, 2002, to reduce the torque.

(g) For CF6–80E1A4 engines, reduce the pylon attachment bolt torque on each of the five bolts to 400–450 lb ft, before exceeding 6,520 CSN or before exceeding 4,480 CSLI, whichever is later. Use paragraph 3. of Accomplishment Instructions of ASB No. CF6–80E1 S/B 72–A0184, Revision 1, dated February 26, 2002, to reduce the torque.

Replacement of Left Vertical Link Bolts

(h) For CF6–80E1A2 and –80E1A4 turbofan engines, remove the three left vertical link bolts, P/N 1304M26P02, and replace with three left vertical link bolts, P/N 1304M26P05, at next shop visit. Bolts P/N 1304M26P05 are serialized and have a calculated life limit published in the Life Limits section of Chapter 5 of the engine manual.

Definitions

(i) For the purpose of this AD, CSLI is defined as cycles since the engine was last installed on the pylon.

(j) For the purpose of this AD, next shop visit is defined as induction of the engine into a shop for any reason.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) You must use GE Alert Service Bulletin No. CF6–80E1 S/B 72–A0184, Revision 1, dated February 26, 2002, for reducing the bolt torque required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422. You can review a copy at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(m) The Direction Generale de L'Aviation Civile, which is the airworthiness authority for France, issued AD 2001–556(B), which pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on December 23, 2003.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–144 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16408; Airspace Docket No. 03–ACE–76]

Modification of Class E Airspace; Plattsmouth, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Plattsmouth, NE nondirectional radio beacon (NDB) has been relocated and new NDB Standard Instrument Approach Procedures (SIAPs) have been developed to serve Plattsmouth Municipal Airport. An examination of controlled airspace for Plattsmouth, NE revealed discrepancies in the Plattsmouth Municipal Airport airport reference point and in the legal description for the Plattsmouth, NE Class E airspace area. The examination also revealed that this airspace area does not provide adequate airspace for diverse departures.

This action provides controlled airspace of appropriate dimensions to protect aircraft departing Plattsmouth

Municipal Airport in instrument weather conditions and aircraft executing SIAPs to the airport. It also corrects discrepancies in the legal descriptions of the Plattsmouth, NE Class E airspace and brings the airspace area and legal description into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before February 23, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16408/ Airspace Docket No. 03–ACE–76, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Plattsmouth, NE. It incorporates the current airport reference point for Plattsmouth Municipal Airport and the current location of the Plattsmouth NDB. It provides appropriate controlled airspace to protect aircraft executing SIAPs to Plattsmouth Municipal Airport. It enlarges the airspace area to comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E. The area will be depicted on appropriate aeronautical charts. Class AE airspace area extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16408/Airspace Docket No. 03–ACE–76.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE 45 Plattsmouth, NE

Plattsmouth Municipal Airport, NE
(Lat. 40°57′01″ N., long. 95°55′04″ W.)
Plattsmouth NDB
(Lat. 40°56′38″ N., long. 95°54′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Plattsmouth Municipal Airport; and within 2.5 miles each side of the 189° bearing from the Plattsmouth NDB extending from the 6.4-mile radius to 7 miles south of the NDB; and within 2.5 miles each side of the 340° bearing from the NDB extending from the 6.4-mile radius to 7 miles north of the

NDB, excluding that portion within the Omaha, NE Class C and E airspace areas.

* * * * *

Issued in Kansas City, MO, on December 18, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–241 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16409; Airspace Docket No. 03–ACE–78]

Modification of Class E Airspace; Sidney, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Sidney, NE.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 20, 2003 (68 FR 65389). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 19, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on December 18, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–242 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404 and 422

[Regulations No. 4 and 22]

RIN 0960–AF52

Filing of Applications and Related Forms

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: These final regulations revise our rules relating to the filing of an application for Social Security benefits. They inform the public of the option of filing Internet applications on our Web site for several types of Social Security benefits. These changes explain that we will accept Internet applications completed on our Web site as prescribed applications for filing for Social Security benefits. We have added cross-references to several sections to describe what makes an application a claim for benefits; and we updated the list of related forms with other forms that are currently used in the application process.

EFFECTIVE DATE: These rules are effective on February 5, 2004.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1767 or TTY (410) 966–5609. For information on eligibility or filing for benefits: Call our national toll-free number 1–800–722–1213, or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online at *http://www.socialsecurity.gov.*

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.ssa.gov/regulations.*

SUPPLEMENTARY INFORMATION:

Background

An individual must file an application in order to receive benefits under title II of the Social Security Act (the Act). In part 404 of our regulations, we have established rules for filing a claim for old-age, disability, dependents', and survivors' insurance benefits, which define the criteria for determining when an application is a claim for benefits. Similarly, we include the names of places where an application may be filed, and explain what makes an application form acceptable as a claim for benefits. Our rules state that individuals must either sign the application or have someone who can act on their behalf sign for them. Except in limited situations, individuals must be alive at the time the application is filed.

In part 404, we further state that a claim filed with the Railroad Retirement Board on one of its forms for an annuity is an application for title II benefits, unless the individual states otherwise. We state that a claim filed with the Department of Veterans Affairs on one of its forms for survivors' dependency and indemnity compensation is also an application for Social Security dependents' and survivors' benefits (except for the lump sum death payment).

The types of applications currently prescribed by SSA are described in part 422 of our regulations. SSA's application process has evolved from its primary use of the traditional pre-printed application form for claims-taking to SSA employees who input information provided by the applicant into a computer terminal for processing. Computer printouts of the data are generated for the applicant to review the information and to sign the application.

We are committed to providing the public with the option to conduct business electronically by adding more Internet services on SSA's Web site, Social Security Online *http://www.socialsecurity.gov/.*

Toward this objective, we developed an Internet Retirement Insurance Benefit application for national implementation in the fall of 2000. Since then, we have expanded Internet applications to encompass spouses' and disability insurance benefits. Statistics confirm that Internet usage has increased among older Americans, and as a result they have requested that more online services be made available to them. Internet applications for other benefits categories will be available in the future. As applications become available on our Web site, an explanation of our approved signature method for the application will be incorporated as part of the Internet application process. In the interim, individuals who use the Internet application process must physically sign the printed application and submit it to us.

The main purpose for these revisions is to inform the public of the option of filing an Internet application on our Web site for several types of Social Security benefits. These revisions include updating the list of related forms in section 422.505(b) to reflect only those forms that are currently in

use in the application process. These revisions add cross-references to related sections to ensure that all necessary information for filing an application is available to the public. Finally, the revisions make the regulations more readable, thus enabling the public to better understand the contents of the sections.

The following is a summary of the revisions and our reasons for the changes.

Explanation of Revisions

We have changed the language in section 404.610 for clarity. We added a cross-reference in section 404.610(a) to related section 422.505(a), which explains the types of prescribed applications to be used by the public when filing for Social Security benefits. In section 404.611, we changed the heading as part of reformatting the section. In addition we added a cross-reference in section 404.611(a) to related section 422.505(a), which, as noted above, explains the types of prescribed applications. We also revised the caption in section 404.611(b) as part of the new format and revised the text to make the section clearer. Similarly, in section 404.611(c) we changed the caption and the text as part of the format change. We changed the heading in section 422.505 and the language in section 422.505(a) to make the contents of the section clearer. We also have changed section 422.505(a) to include language to state that Internet applications on SSA's Web site are prescribed applications. In section 422.505(b) we changed the list of related forms to delete the forms that are obsolete and to add forms that are currently in use. We also updated the titles of several forms.

Public Comments

We published a Notice of Proposed Rulemaking (NPRM) on August 17, 2001 (66 FR 43136), and provided a 60-day comment period on the NPRM. The only comment concerned the subject of electronic filing. The comment stated that ''it was about time.'' This comment was supportive of our proposed changes. Accordingly, we are publishing these changes as indicated in the NPRM except we:

- Clarified in § 422.505(a) that an applicant must sign a hard paper copy.
- Added SSA–783 to § 422.505(b). This form was inadvertently omitted from the NPRM.
- Deleted SSA–1323 from § 422.505(b). This form has been obsoleted.
- Made minor editorial changes.

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements in sections 404.610, 404.611, and 422.505. The public reporting burden is accounted in the Information Collection Request for the various forms that the public uses to submit the information to us. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirements contained in these rules. We are seeking clearance of the burdens referenced in these rules because they were not considered during publication; these burdens will not be effective until cleared by the OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We will publish a notice in the **Federal Register** upon OMB approval of the information collection requirement(s). Comments should be submitted to the OMB desk officer for SSA within 30 days of publication of these final rules at the following address: Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503. Fax No. (202) 395–6974.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance: 96.002 Social Security-Retirement Insurance; and 96.004 Social Security-Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 422

Administrative practice and procedure, Freedom of Information, Organization and functions (government agencies), Social Security.

Dated: December 29, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reason set forth in the preamble, we are amending subpart G of part 404 and subpart F of part 422, in chapter III of title 20 of the Code of Federal Regulations, as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart G—[Amended]

■ 1. The authority citation for subpart G of part 404 continues to read as follows:

Authority: Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C., 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

■ 2. Section 404.610 is revised to read as follows:

§ 404.610 What makes an application a claim for benefits?

We will consider your application a claim for benefits if it generally meets all of the following conditions:

(a) You must file on a prescribed form, as stated in § 404.611. *See* § 422.505(a) of this chapter for the types of prescribed applications you can file.

(b) You must complete and file the application with us as stated in § 404.611 and § 404.614.

(c) You, or someone described in § 404.612 who may sign an application for you, must sign the application.

(d) You must be alive at the time you file (unless one of the limited exceptions in § 404.615 applies).

■ 3. Section § 404.611 is revised to read as follows:

§ 404.611 How do I file an application for Social Security benefits?

(a) *General rule.* You must apply for benefits on an application that we prescribe. *See* § 422.505(a) of this chapter for the types of applications we will accept. *See* § 404.614 for places where you can file your application for benefits.

(b) *What if I file a claim with the Railroad Retirement Board (RRB)?* If you file an application with the RRB on one of its forms for an annuity under section 2 of the Railroad Retirement Act, as amended, we will consider this an

application for title II Social Security benefits, which you may be entitled to, unless you tell us otherwise.

(c) *What if I file a claim with the Department of Veterans Affairs (DVA)?* If you file an application with the DVA on one of its forms for survivors' dependency and indemnity compensation (*see* section 3005 of title 38 U.S.C.), we will consider this an application for Social Security survivors' benefits, except for the lump sum death payment.

PART 422—ORGANIZATION AND PROCEDURES

Subpart F—[Amended]

■ 4. The authority citation for subpart F of part 422 continues to read as follows:

Authority: Secs. 205 and 702(a)(5) of the Social Security Act (42 U.S.C. 405 and 902(a)(5)). Section 422.512 is also issued under 30 U.S.C. 901 *et seq.*

■ 5. Section 422.505 is revised to read as follows:

§ 422.505 What types of applications and related forms are used to apply for retirement, survivors, and disability insurance benefits?

(a) *Applications.* Prescribed applications include our traditional pre-printed forms, and applications our employees complete on computer screens based on information you give us. We then print a copy on paper, have you sign it and process the signed application electronically. You may also use SSA's Internet website to submit an SSA-approved application to us. You can complete an Internet application on a computer (or other suitable device, such as an electronic kiosk) and electronically transmit the form to us using an SSA-approved electronic signature. If, however, we do not have an approved electronic signature established when you file your Internet application, you must print and sign the completed application and deliver the form to us.

(b) *Related forms.* The following are some related forms:

SSA–3—Marriage Certification. (For use in connection with Application for Wife's or Husband's Insurance Benefits, (Form SSA–2))

SSA–11—Request to be Selected as Payee. (For use when an individual proposing to be substituted for the current payee files an application to receive payment of benefits on behalf of disabled child, or a child under 18, or an incapable or incompetent beneficiary or for himself/herself if he/she has a payee.)

SSA–21—Supplement to Claim of Person Outside of the United States. (To be completed by or on behalf of a person who is, was, or will be outside the United States.)

SSA–25—Certificate of Election for Reduced Spouse's Benefits. (For use by a wife or husband age 62 to full retirement age who has an entitled child in his or her care and elects to receive reduced benefits for months during which he or she will not have a child in his or her care.)

SSA–721—Statement of Death by Funeral Director. (This form may be used as evidence of death (*see* § 404.704 of this chapter).)

SSA–760—Certificate of Support (Parent's, Husband's or Widower's). (For use in collecting evidence of support.)

SSA–766—Statement of Self-Employment Income. (For use by a claimant to establish insured status based on self-employment income in the current year.)

SSA–783—Statement Regarding Contributions. (This form may be used as evidence of total contributions for a child.)

SSA–787—Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits. (This form may be used to request evidence of capability from various medical sources.)

SSA–824—Report on Individual with Mental Impairment. (For use in obtaining medical evidence from medical sources when the claimant has been treated for a mental impairment.)

SSA–827—Authorization for Source to Release Information to the Social Security Administration. (To be completed by a disability claimant to authorize release of medical or other information.)

SSA–1002—Statement of Agricultural Employer (Years Prior to 1988). (For use by employer to provide evidence of annual wage payments for agricultural work.)

SSA–1372—Student's Statement Regarding School Attendance. (For use in connection with request for payment of child's insurance benefits for a child who is age 18 through 19 and a full-time student.

SSA–1388—Report of Student Beneficiary at End of School Year. (For use in confirming continuing eligibility to benefits or indicating the need for suspension or termination action.)

SSA–1724—Claim for Amount Due in the Case of a Deceased Beneficiary. (For use in requesting amounts payable under title II to a deceased beneficiary.)

SSA–3368—Disability Report—Adult. (For use in recording information about the claimant's condition, source of medical evidence and other information needed to process the claim to a determination or decision.)

SSA–3369—Disability Report—Work History. (For use in recording work history information.)

SSA–3826–F4—Medical Report—General. (For use in helping disability claimants in obtaining medical records from their doctors or other medical sources.)

SSA–3827—Medical Report—(Individual with Childhood Impairment). (For use in requesting information to determine if an individual's impairment meets the requirements for payment of childhood disability benefits.)

SSA–4111—Certificate of Election for Reduced Widow(er)s Benefits. (For use by applicants for certain reduced widow's or widower's benefits.)

SSA–7156—Farm Self-Employment Questionnaire. (For use in connection with claims for benefits based on farm income to determine whether the income is covered under the Social Security Act.)

SSA–7160—Employment Relationship Questionnaire. (For use by an individual and the alleged employer to determine the individual's employment status.)

SSA–7163—Questionnaire about Employment or Self-Employment Outside the United States.

(To be completed by or on behalf of a beneficiary who is, was, or will be employed or self-employed outside the United States.)

[FR Doc. 04–188 Filed 1–5–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Nitazoxanide Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by IDEXX Pharmaceuticals, Inc. The NADA provides for veterinary prescription use of an nitazoxanide oral paste for the treatment of equine protozoal myeloencephalitis (EPM).

DATES: This rule is effective January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: IDEXX Pharmaceuticals, Inc., 4249–105 Piedmont Pkwy., Greensboro, NC 27410, filed NADA 141–178 for veterinary prescription use of NAVIGATOR (32 percent nitazoxanide) Antiprotozoal Oral Paste for the treatment of EPM caused by *Sarcocystis neurona*. The NADA is approved as of November 18, 2003, and 21 CFR part 520 is amended by adding new § 520.1498 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning November 18, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1498 is added to read as follows:

§ 520.1498 Nitazoxanide paste.

(a) *Specifications*. Each milligram (mg) of paste contains 0.32 mg nitazoxanide.

(b) *Sponsor*. See No. 065274 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount*. On days 1 through 5, administer 11.36 mg per pound (/lb) body weight; on days 6 through 28, administer 22.72 mg/lb body weight.

(2) *Indications for use*—For the treatment of equine protozoal myeloencephalitis (EPM) caused by *Sarcocystis neurona*.

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 23, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–129 Filed 1–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone and Estradiol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Fort Dodge Animal Health, Division of Wyeth. The ANADA provides for use of three different strength trenbolone acetate and estradiol implants in cattle.

DATES: This rule is effective January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 500 Fifth St. NW., Fort Dodge, IA 50501, filed ANADA 200–367 for the use of three different strength trenbolone acetate and estradiol implants in cattle. SYNOVEX T120 and SYNOVEX T80 are for use in steers fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency. SYNOVEX T40 is for use in pasture cattle (slaughter, stocker, and feeder steers and heifers) for increased rate of weight gain. Fort Dodge Animal Health's SYNOVEX T120, SYNOVEX T80, and SYNOVEX T40 are approved as generic copies of Intervet, Inc.'s REVALOR–S, REVALOR–IS, and REVALOR–G, approved under NADA 140–897. The application is approved as of November 18, 2003, and the regulations are amended in 21 CFR 522.2477 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.2477 is amended by adding paragraph (b)(3) and by revising the heading of paragraph (d)(3) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

* * * * *

(b) * * *

(3) No. 000856 for use as in paragraphs (d)(1)(i)(A), (d)(1)(i)(D), (d)(1)(ii), (d)(1)(iii), (d)(3)(i)(A), (d)(3)(ii), and (d)(3)(iii).

* * * * *

(d) * * *

(3) *Pasture cattle (slaughter, stocker, and feeder steers and heifers)*—* * *

* * * * *

Dated: December 23, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–131 Filed 1–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Ivermectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for topical use of ivermectin on cattle to control infections and prevent reinfection with certain species of external and internal parasites.

DATES: This rule is effective January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Janis Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: *jmessenh@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed a supplement to NADA 140–841 for IVOMEC (ivermectin) Pour-On for Cattle. The application provides for topical use of 0.5 percent ivermectin solution on cattle to control infections and prevent reinfection with *Oesophagostomum radiatum* and *Dictyocaulus viviparus* for 28 days after treatment, *Cooperia punctata* and *Trichostrongylus axei* for 21 days after treatment, *C. surnabada* for 14 days after treatment, and *Damalinia bovis* for 56 days after treatment. The NADA is approved as of November 24, 2003, and § 524.1193 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the regulation is revised to remove two species of parasites, *Oesophagostomum venulosum* and *Chorioptes bovis*, which were codified in error during the original approval NADA 140–841 (55 FR 50551, December 7, 1990). Also at this time, the indication for *Cooperia* spp. is speciated as *Cooperia oncophora*, *C. punctata*, and *C. surnabada* to conform with current labeling practices. A veal calf warning statement is being added because residue depletion data for this class of cattle has not been submitted to the application.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning November 24, 2003. Exclusivity applies only to the extension of the persistent effectiveness claims for *O. radiatum* from 14 days after treatment to 28 days after treatment and for *C. punctata* and *T. axei* from 14 days after treatment to 21 days after treatment, and to the new persistent effectiveness claims for *D. viviparus*, *C. surnabada*, and *D. bovis* for which new data were required.

The agency has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 524.1193 is amended by revising paragraphs (b), (e)(1), and (e)(2), and by adding two sentences to paragraph (e)(3) to read as follows:

§ 524.1193 Ivermectin topical solution.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(1) No. 050604 for use as in paragraphs (e)(1), (e)(2)(i), (e)(2)(iii), and (e)(3) of this section.

(2) Nos. 051259, 051311, 058829, 059130, and 066916 for use as in paragraphs (e)(1), (e)(2)(i), (e)(2)(ii), and (e)(3) of this section.

* * * * *

(e) *Conditions of use in cattle*—(1) *Amount.* One mL per 22 pounds (0.5 milligram per kilogram) of body weight applied topically to the back of the animal.

(2) *Indications for use*—(i) It is used for the treatment and control of: Gastrointestinal roundworms (adults and fourth-stage larvae) *Ostertagia ostertagi* (including inhibited stage), *Haemonchus placei*, *Trichostrongylus axei*, *T. colubriformis*, *Cooperia oncophora*, *C. punctata*, *C. surnabada*, *Oesophagostomum radiatum*; (adults) *Strongyloides papillosus*, *Trichuris* spp.; lungworms (adults and fourth-stage larvae) *Dictyocaulus viviparus*; cattle grubs (parasitic stages) *Hypoderma bovis*, *H. lineatum*; mites *Sarcoptes scabei* var. *bovis*; lice *Linognathus vituli*, *Haematopinus eurysternus*, *Damalinia bovis*, *Solenoptes capillatus*; and horn flies *Haematobia irritans*.

(ii) It controls infections and prevents reinfection with *O. ostertagi*, *O. radiatum*, *H. placei*, *T. axei*, *C. punctata*, and *C. oncophora* for 14 days after treatment.

(iii) It controls infections and prevents reinfection with *O. radiatum* and *D. viviparus* for 28 days after treatment, *C. punctata* and *T. axei* for 21 days after treatment, *H. placei*, *C. oncophora*, and *C. surnabada* for 14 days after treatment, and *D. bovis* for 56 days after treatment.

(3) * * * A withdrawal period has not been established for this product on preruminating calves. Do not use on calves to be processed for veal.

Dated: December 24, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–130 Filed 1–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9110]

RIN 1545–BA85

Section 42 Carryover and Stacking Rule Amendments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend several existing regulations concerning the low-income housing tax credit. The regulations primarily reflect changes to the law made by the Community Renewal Tax Relief Act of 2000 and affect owners of low-income housing projects who claim the credit and the State or local housing credit agencies who administer the credit.

DATES: *Effective Date:* These regulations are effective January 6, 2004.

Applicability Dates: For dates of applicability of these regulations, see §§ 1.42–12(a)(2) and (3), and 1.42–14(l)(2).

FOR FURTHER INFORMATION CONTACT: Lauren R. Taylor (202) 622–3040 or Christopher J. Wilson (808) 539–2874 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the IRS published a notice of proposed rulemaking in the **Federal Register** (68 FR 40218) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code. These amendments provide guidance regarding changes to section 42 made by the Community Renewal Tax Relief Act of 2000 (Public Law 106–554) (2000 Act) and make certain changes to the regulations to help facilitate the electronic filing (E-filing) of income tax returns.

One commentator submitted written comments in response to the notice of proposed rulemaking. A public hearing was scheduled for September 23, 2003, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. The IRS received one request to speak at the public hearing. This request was withdrawn before the hearing date. On September 15, 2003, the IRS published a notice (68 FR 53926) canceling the public hearing on the proposed regulations. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

Section 42 provides for a low-income housing tax credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency) of the jurisdiction where the building is located.

In general, an allocation must be made not later than the close of the calendar year in which the building is placed in service. Under section 42(h)(1)(E), an allocation (carryover allocation) may be made to a ''qualified building'' that has not yet been placed in service, provided the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation. Section 42(h)(1)(F) provides rules for multi-building projects receiving project-based carryover allocations. Following the changes made by the 2000 Act, section 42(h)(1)(E)(ii) defines a qualified building as any building that is part of a project if the taxpayer's basis in the project (as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation).

The commentator recommended revising § 1.42–6(a)(2) of the proposed regulations to clarify that each building in a multi-building project receiving a project-based carryover allocation under section 42(h)(1)(F) need not separately meet the 10 percent basis requirement. The commentator states that the proposed regulations appear to require that each building in a multi-building project that receives a project-based carryover allocation must meet the 10 percent basis requirement separately. The proposed regulations do not require that each building in a multi-building project satisfy the 10 percent basis requirement separately for project-based carryover allocations made under section 42(h)(1)(F). For allocations made under section 42(h)(1)(F), the 10 percent basis requirement is only required to be met on a project basis. The final regulations clarify this issue.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a new collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded this Treasury decision was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Christopher J. Wilson and Lauren R. Taylor, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ Par. 2. Section 1.42–6 is amended by:

■ 1. Revising paragraphs (a), (b)(4) *Example 2,* (c)(1), (c)(3), (d)(2)(viii), and (d)(4)(i).

■ 2. Removing the word ''September'' from paragraph (b)(4) *Example 1.* and adding the word ''May'' in its place; removing the year ''1993'' each place it appears and by adding the year ''2003'' in its place; and removing the year ''1995'' and adding the year ''2005'' in its place.

■ 3. Removing the language ''by the close of the calendar year of the allocation'' from the first and last sentences of

paragraph (c)(2) and adding the language ''by the close of the calendar year of the allocation (for allocations made before July 1) or by the close of the date that is 6 months after the date the allocation is made (for allocations made after June 30)'' in its place.

■ 4. Removing the language '', ''Carryover Allocation of the Low-Income Housing Credit,'' from paragraph (d)(4)(ii).

■ 5. Removing the language ''before the close of the calendar year of the allocation'' from the first sentence of paragraph (e)(2) and adding the language ''by the close of the calendar year of the allocation (for allocations made before July 1) or by the close of the date that is 6 months after the date the allocation is made (for allocations made after June 30)'' in its place.

The revisions read as follows:

§ 1.42–6 Buildings qualifying for carryover allocations.

(a) *Carryover allocations*—(1) *In general.* A carryover allocation is an allocation that meets the requirements of section 42(h)(1)(E) or (F). If the requirements of section § 42(h)(1)(E) or (F) that are required to be satisfied by the close of a calendar year are not satisfied, the allocation is not valid and is treated as if it had not been made for that calendar year. For example, if a carryover allocation fails to satisfy a requirement in § 1.42–6(d) for making an allocation, such as failing to be signed or dated by an authorized official of an allocating agency by the close of a calendar year, the allocation is not valid and is treated as if it had not been made for that calendar year.

(2) *10 percent basis requirement.* A carryover allocation may only be made with respect to a qualified building. A qualified building is any building which is part of a project if, by the date specified under paragraph (a)(2)(i) or (ii) of this section, a taxpayer's basis in the project is more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the calendar year the allocation is made. For purposes of meeting the 10 percent basis requirement, the determination of whether a building is part of a single-building project or multi-building project is based on whether the carryover allocation is made under section 42(h)(1)(E) (building-based allocation) or section 42(h)(1)(F) (project-based allocation). In the case of a multi-building project that receives an allocation under section 42(h)(1)(F), the 10 percent basis requirement is satisfied by reference to the entire project.

(i) *Allocation made before July 1.* If a carryover allocation is made before July 1 of a calendar year, a taxpayer must meet the 10 percent basis requirement by the close of that calendar year. If a taxpayer does not meet the 10 percent basis requirement by the close of the calendar year, the carryover allocation is not valid and is treated as if it had not been made.

(ii) *Allocation made after June 30.* If a carryover allocation is made after June 30 of a calendar year, a taxpayer must meet the 10 percent basis requirement by the close of the date that is 6 months after the date the allocation was made. If a taxpayer does not meet the 10 percent basis requirement by the close of the required date, the carryover allocation must be returned to the Agency. Unlike a carryover allocation made before July 1, if a taxpayer does not meet the 10 percent basis requirement by the close of the required date, the carryover allocation is treated as a valid allocation for the calendar year of allocation, but is included in the ''returned credit component'' for purposes of determining the State housing credit ceiling under section 42(h)(3)(C) for the calendar year following the calendar year of the allocation. See § 1.42–14(d)(1).

(b) * * *

(4) * * *

Example 2. (i) *Facts.* D, an accrual-method taxpayer, received a carryover allocation from Agency, the state housing credit agency of State X, on September 12, 2003. As of that date, D has not begun construction of the low-income housing building D plans to build and D does not have basis in the land on which D plans to build the building. From September 12, 2003, to the close of March 12, 2004, D incurs some costs related to the planned building, including architects' fees. As of the close of March 12, 2004, these costs do not exceed 10 percent of D's reasonably expected basis in the single-building project as of the close of 2005.

(ii) *Determination of whether building is qualified.* Because D's carryover-allocation basis as of the close of March 12, 2004, is not more than 10 percent of D's reasonably expected basis in the single-building project, the building is not a qualified building for purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section. Accordingly, the carryover allocation to D must be returned to the Agency. The allocation is valid for purposes of determining the amount of credit allocated by Agency from State X's 2003 State housing credit ceiling, but is included in the returned credit component of State X's 2004 housing credit ceiling.

(c) *Verification of basis by Agency*—(1) *Verification requirement.* An Agency that makes a carryover allocation to a taxpayer must verify that the taxpayer has met the 10 percent basis requirement of paragraph (a)(2) of this section.

(2) * * *

(3) *Time of verification*—(i) *Allocations made before July 1.* For a carryover allocation made before July 1, an Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the calendar year of allocation or within a reasonable time following the close of the calendar year of allocation. The Agency will need to verify basis as provided in paragraph (c)(2) of this section to accurately complete the Form 8610, ''Annual Low-Income Housing Credit Agencies Report,'' and the Schedule A (Form 8610), ''Carryover Allocation of Low-Income Housing Credit,'' for the calendar year of the allocation. If the basis certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify before the Form 8610 is filed that the taxpayer has satisfied the 10 percent basis requirement for a carryover allocation made before July 1, the allocation is not valid and is treated as if it had not been made and the carryover allocation should not be reported on the Schedule A (Form 8610).

(ii) *Allocations made after June 30.* An Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the date that is 6 months after the date the allocation was made or within a reasonable period of time following the close of the date that is 6 months after the date the allocation was made. The Agency will need to verify basis as provided in paragraph (c)(2) of this section. If the basis certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify that the taxpayer has satisfied the 10 percent basis requirement for a carryover allocation made after June 30, the allocation must be returned to the Agency. The carryover allocation is a valid allocation for the calendar year of the allocation, but is included in the returned credit component of the State housing credit ceiling for the calendar year following the calendar year of the allocation .

(d) * * *

(2) * * *

(viii) For carryover allocations made before July 1, the taxpayer's basis in the

project (land and depreciable basis) as of the close of the calendar year of the allocation and the percentage that basis bears to the reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year of allocation;

* * * * *

(4) *Recordkeeping requirements*—(i) *Taxpayer.* When an allocation is made pursuant to section 42(h)(1)(E) or (F), the taxpayer must retain a copy of the allocation document. The Form 8609 that reflects the allocation must be filed for the first taxable year that the credit is claimed and for each taxable year thereafter throughout the compliance period, whether or not a credit is claimed for the taxable year.

* * * * *

■ Par. 3. Section 1.42–8 is amended by:

■ 1. Revising the second sentence of paragraph (a)(6)(i), paragraph (a)(6)(ii), the sixth sentence of paragraph (a)(7) *Example 1.* (ii), (a)(7) *Example 1.* (iv), (a)(7) *Example 2* (iv), and (b)(4)(ii).

■ 2. Removing the year ''1993'' each place it appears in paragraph (a)(7), *Example 1* and *Example 2* and adding the year ''2003'' in its place; removing the year ''1994'' each place it appears in paragraph (a)(7) and adding the year ''2004'' in its place.

■ 3. Removing the second sentence of paragraph (a)(7) *Example 1.* (iii), the third sentence of paragraph (a)(7) *Example 2* (iii), and third sentence of paragraph (b)(4)(i).

The revisions read as follows:

§ 1.42–8 Election of appropriate percentage month.

(a) * * *

(6) *Procedures*—(i) *Taxpayer.* * * * The taxpayer must retain a copy of the binding agreement and the election statement.

(ii) *Agency.* The Agency must retain the original of the binding agreement and election statement and, to the extent required by Schedule A (Form 8610), ''Carryover Allocation of Low-Income Housing Credit,'' account for the binding agreement and election statement on that schedule.

(7) * * *

Example 1. * * *

(ii) * * * Because allocations were made for the building in two separate calendar years, Agency must issue two Forms 8609, ''Low-Income Housing Credit Allocation Certification,'' to X. * * *

* * * * *

(iv) Agency retains the original of the binding agreement, election statement, and 2003 carryover allocation document. Agency accounts for the binding agreement, election statement, and 2003 carryover allocation on the Schedule A (Form 8610) that it files for the 2003 calendar year. After the building is placed in service in 2004, and assuming other necessary requirements for issuing a Form 8609 are met (for example, taxpayer has certified all sources and uses of funds and development costs for the building under § 1.42–17), Agency issues to X a copy of the Form 8609 reflecting the 2003 carryover allocation of $100,000. Agency files the original of this Form 8609 with the Form 8610, ''Annual Low-Income Housing Credit Agencies Report,'' that it files for the 2004 calendar year. Agency also issues to X a copy of the Form 8609 reflecting the 2004 allocation of $50,000 and files the original of this Form 8609 with the Form 8610 that it files for the 2004 calendar year. Agency retains copies of the Forms 8609 that are issued to X.

Example 2. * * *

* * * * *

(iv) Agency retains the original of the binding agreements, election statements, and carryover allocation documents. Agency accounts for the binding agreement, election statement, and 2003 carryover allocation on the Schedule A (Form 8610) that it files for the 2003 calendar year. Agency also accounts for the binding agreement, election statement, and 2004 carryover allocation on the Schedule A (Form 8610) that it files for the 2004 calendar year. After each separate new building is placed in service, and assuming other necessary requirements for issuing a Form 8609 are met (for example, taxpayer has certified all sources and uses of funds and development costs for the building under § 1.42–17), the Agency will issue to X a copy of the Form 8609 reflecting the 2003 carryover allocation of $70,000 and a copy of the Form 8609 reflecting the 2004 carryover allocation of $50,000, respectively. Agency files the original of each Form 8609 with the Form 8610 that reflects the calendar year each Form 8609 is issued. Agency retains copies of the Forms 8609 that are issued to X.

(b) * * *

(4) * * *

(ii) *Agency.* The Agency must retain the original of the election statement and a copy of the Form 8609 that reflects the election statement. The Agency must file an additional copy of the Form 8609 with the Agency's Form 8610 that reflects the calendar year the Form 8609 is issued.

■ Par. 4. Section 1.42–12 is amended by revising paragraph (a) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

(a) *Effective dates*—(1) *In general.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12 are applicable on May 2, 1994. However, binding agreements, election statements, and carryover allocation documents entered into before May 2, 1994, that follow the guidance set forth in Notice 89–1, 1989–1 C.B. 620 (*see* § 601.601(d)(2)(ii)(b) of this chapter) need not be changed to conform to the rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12.

(2) *Community Renewal Tax Relief Act of 2000*–(i) *In general.* Section 1.42–6 (a), (b)(4)(iii) *Example 1* and *Example 2,* (c), (d)(2)(viii), and (e)(2) are applicable for housing credit dollar amounts allocated after January 6, 2004. However, the rules in § 1.42–6 (a), (b)(4)(iii) *Example 1* and *Example 2,* (c), (d)(2)(viii), and (e)(2) may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and on or before January 6, 2004. Otherwise, subject to the applicable effective dates of the corresponding statutory provisions, the rules that apply for housing credit dollar amounts allocated on or before January 6, 2004 are contained in § 1.42–6 in effect on and before January 6, 2004 (see 26 CFR part 1 revised as of April 1, 2003).

(3) *Electronic filing simplification changes.* Sections 1.42–6(d)(4) and 1.42–8(a)(6)(i), (a)(6)(ii), (a)(7) Example 1 and Example 2, (b)(4)(i), and (b)(4)(ii) are applicable for forms filed after January 6, 2004.

The rules that apply for forms filed on or before January 6, 2004 are contained in § 1.42–6 and § 1.42–8 in effect on and before January 6, 2004 (see 26 CFR part 1 revised as of April 1, 2003).

* * * * *

■ Par. 5. Section 1.42–14 is amended by:

■ 1. Revising the section heading and paragraphs (a), (g), (i)(2), (k) and (l).

■ 2. Removing paragraph (c) and the second to last sentence of paragraph (e).

■ 3. Redesignating paragraph (b) as paragraph (c).

■ 4. Adding a new paragraph (b).

■ 5. Adding a new sentence at the end of paragraph (d)(2)(iv)(A).

The revisions and additions read as follows:

§ 1.42–14 Allocation rules for post-2000 State housing credit ceiling amount.

(a) *State housing credit ceiling*—(1) *In general.* The State housing credit ceiling for a State for any calendar year after 2000 is comprised of four components. The four components are—

(i) The unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component);

(ii) The greater of—

(A) $1.75 ($1.50 for calendar year 2001) multiplied by the State population; or (B) $2,000,000 (the population component);

(iii) The amount of State housing credit ceiling returned in the calendar

year (the returned credit component); plus

(iv) The amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

(2) *Cost of Living Adjustment*—(i) *General rule.* For any calendar year after 2002, the $2,000,000 and $1.75 amounts in paragraph (a)(1)(ii) of this section are each increased by an amount equal to—

(A) The dollar amount; multiplied by

(B) The cost-of-living adjustment determined under section 1(f)(3) for the calendar year by substituting ''calendar year 2001'' for ''calendar year 1992'' in section 1(f)(3)(B).

(ii) *Rounding.* Any increase resulting from the application of paragraph (a)(2)(i) of this section which, in the case of the $2,000,000 amount, is not a multiple of $5,000, is rounded to the next lowest multiple of $5,000, and which, in the case of the $1.75 amount, is not a multiple of 5 cents, is rounded to the next lowest multiple of 5 cents.

(b) *The unused carryforward component.* The unused carryforward component of the State housing credit ceiling for any calendar year is the unused State housing credit ceiling, if any, of the State for the preceding calendar year. The unused State housing credit ceiling for any calendar year is the excess, if any, of—

(1) The sum of the population, returned credit, and national pool components for the calendar year; over

(2) The aggregate housing credit dollar amount allocated for the calendar year reduced by the housing credit dollar amounts allocated from the unused carryforward component for the calendar year.

(d) * * *

(2) * * *

(iv) * * *

(A) *Building not qualified within required time period.* * * * Also, a building that has received a post-June 30 carryover allocation is not qualified within the required time period if the taxpayer does not meet the 10 percent basis requirement by the date that is 6 months after the date the allocation was made (as described in § 1.42–6(a)(2)(ii)).

* * * * *

(g) *Stacking Order.* Credit is treated as allocated from the various components of the State housing credit ceiling in the following order. The first credit allocated for any calendar year is treated as credit from the unused carryforward component of the State housing credit ceiling for the calendar year. After all of the credit in the unused carryforward component has been allocated, any credit allocated is treated as allocated from the sum of the population, returned credit, and national pool components of the State housing credit ceiling.

* * * * *

(i) * * *

(2) *Unused housing credit carryover.* The unused housing credit carryover of a State for any calendar year is the excess, if any, of—

(i) The unused carryforward component of the State housing credit ceiling for the calendar year; over

(ii) The total housing credit dollar amount allocated for the calendar year.

* * * * *

(k) Example. (1) The operation of the rules of this section is illustrated by the following examples. Unless otherwise stated in an example, Agency A is the sole Agency authorized to make allocations of housing credit dollar amounts in State M, all of Agency A's allocations are valid, and for calendar year 2003, Agency A has available for allocation a State housing credit ceiling consisting of the following housing credit dollar amounts:

A. unused carryforward component	$50
B. population component	110
C. returned credit component	10
D. national pool component	0
Total	170

(2) In addition, the $10 of returned credit component was returned before October 1, 2003.

Example 1—(i) Additional facts. By the close of 2003, Agency A had allocated $80 of the State M housing credit ceiling. Of the $80 allocated, $17 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The $80 of allocated credit is first treated as allocated from the unused carryforward component of the State housing credit ceiling. The $80 of allocated credit exceeds the $50 attributable to the unused carryforward component by $30. Because the unused carryforward component is fully utilized no credit will be forfeited by State M to the 2004 National Pool. The remaining $30 of allocated credit will next be treated as allocated from the $120 in credit determined by aggregating the population, returned credit, and national pool components ($110 + 10 + 0 = $120). The $90 of unallocated credit remaining in State M's 2003 State housing credit ceiling ($120 − 30 = $90) represents the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(iii) *Nonprofit set-aside.* Agency A allocated exactly the amount of credit to projects involving qualified nonprofit organizations as necessary to meet the nonprofit set-aside requirement ($17, 10% of the $170 ceiling).

Example 2—(i) Additional facts. By the close of 2003, Agency A had allocated $40 of the State M housing credit ceiling. Of the $40 allocated, $20 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The $40 of allocated credit is first treated as allocated from the unused carryforward component of the State housing credit ceiling. Because the $40 of allocated credit does not exceed the $50 attributable to the unused carryforward component, the remaining components of the State housing credit ceiling are unaffected. The $10 remaining in the unused carryforward component is assigned to the Secretary for inclusion in the 2004 National Pool. The $120 in credit determined by aggregating the population, returned credit, and national pool components becomes the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(iii) *Nonprofit set-aside.* Agency A allocated $3 more credit to projects involving qualified nonprofit organizations than necessary to meet the nonprofit set-aside requirement. This does not reduce the application of the 10% nonprofit set-aside requirement to the State M housing credit ceiling for calendar year 2004.

Example 3—(i) Additional fact. None of the applications for credit that Agency A received for 2003 are for projects involving qualified nonprofit organizations.

(ii) *Nonprofit set-aside.* Because at least 10% of the State housing credit ceiling must be set aside for projects involving a qualified nonprofit organization, Agency A can allocate only $153 of the $170 State housing credit ceiling for calendar year 2003 ($170 − 17 = $153). If Agency A allocates $153 of credit, the credit is treated as allocated $50 from the unused carryforward component and $103 from the sum of the population, returned credit, and national pool components. The $17 of unallocated credit that is set aside for projects involving qualified nonprofit organizations becomes the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

Example 4—(i) Additional facts. The $10 of returned credit component was returned prior to October 1, 2003. However, a $40 credit that had been allocated in calendar year 2002 to a project involving a qualified nonprofit organization was returned to the Agency by a mutual consent agreement dated November 15, 2003. By the close of 2003, Agency A had allocated $170 of the State M's housing credit ceiling, including $17 of credit to projects involving qualified nonprofit organizations.

(ii) *Effect of three-month rule.* Under the three-month rule of paragraph (d)(2)(iii) of this section, Agency A may treat all or part of the $40 of previously allocated credit as returned on January 1, 2004. If Agency A treats all of the $40 amount as having been returned in calendar year 2004, the State M housing credit ceiling for 2003 is $170. This entire amount, including the $17 nonprofit

set-aside, has been allocated in 2003. Under paragraph (i)(3) of this section, State M qualifies for the 2004 National Pool.

(iii) *If three-month rule not used.* If Agency A treats all of the $40 of previously allocated credit as returned in calendar year 2003, the State housing credit ceiling for the 2003 calendar year will be $210 of which $50 will be attributable to the returned credit component ($10 + $40 = $50). Because credit amounts allocated to a qualified nonprofit organization in a prior calendar year that are returned in a subsequent calendar year do not retain their nonprofit character, the nonprofit set-aside for calendar year 2003 is $21 (10% of the $210 State housing credit ceiling). The $170 that Agency A allocated during 2003 is first treated as allocated from the unused carryforward component of the State housing credit ceiling. The $170 of allocated credit exceeds the $50 attributable to the unused carryforward component by $120. Because the unused carryforward component is fully utilized no credit will be forfeited by State M to the 2004 National Pool. The remaining $120 of allocated credit will next be treated as allocated from the $160 in credit determined by aggregating the population, returned credit, and national pool components ($110 + 50 + 0 = $160). The $40 of unallocated credit (which includes $4 of unallocated credit from the $21 nonprofit set-aside) remaining in State M's 2003 housing credit ceiling ($160 − 120 = $40) represents the unused carryforward component of State M's 2004 housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(l) *Effective dates*—(1) *In general.* Except as provided in paragraph (l)(2) of this section, the rules set forth in § 1.42–14 are applicable on January 1, 1994.

(2) *Community Renewal Tax Relief Act of 2000 changes.* Paragraphs (a), (b), (c), (e), (i)(2) and (k) of this section are applicable for housing credit dollar amounts allocated after January 6, 2004. However, paragraphs (a), (b), (c), (e), (i)(2) and (k) of this section may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and on or before January 6, 2004. Otherwise, subject to the applicable applicability dates of the corresponding statutory provisions, the rules that apply for housing credit dollar amounts allocated on or before January 6, 2004 are contained in this section in effect on and before January 6, 2004 (*see* 26 CFR part 1 revised as of April 1, 2003).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–32219 Filed 12–31–03; 11:59 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9111]

RIN 1545–AY94

Definition of Agent for Certain Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definition of agent for certain purposes. The final regulations clarify that the term agent in certain provisions of section 6103 of the Internal Revenue Code (Code) includes contractors.

DATES: *Effective Date:* These regulations are effective January 6, 2004.

Applicability Date: For dates of applicability, see §§ 301.6103(l)–1(b) and 301.6103(m)–1(b).

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 301 under section 6103(l) and (m) of the Code. On February 1, 2002, the **Federal Register** published a notice of proposed rulemaking (REG–120135–01) regarding the definition of agent for certain purposes (67 FR 4938). No public comments or requests for hearing were received. The Treasury decision adopts the regulations as proposed.

Generally, returns and return information are confidential under section 6103 of the Code unless a specific statutory exception applies. In cases of non-tax-related disclosures, returns and return information generally may be disclosed only to officers and employees of Federal, state, and local government agencies, and not to contractors or agents of such agencies. In certain limited circumstances, however, Congress has permitted disclosures to ''agents'' of these agencies. *See* section 6103(l)(6)(B), (l)(12), (m)(2), (m)(4), (m)(5), (m)(7).

This document contains final regulations that clarify that the term *agent* in section 6103(l) and (m) includes contractors. Clarification that the term *agent* includes contractors is necessary for the purpose of bringing certain statutory grants of disclosure authority into alignment with the reality of many agencies' operations. Agencies generally procure the services of third parties under public contracting laws, which do not necessarily incorporate common law concepts of *agent.* This clarification is also consistent with Congressional intent. For example, the Senate Finance Committee, in amending section 6103(m)(2), stated, ''[a]gents are those who are engaged directly in performing or assisting in collection functions for the federal government, presumably, private collection agencies who have contracted with the government to collect claims * * *.'' S. Rep. No. 97–378, at 15 (1982).

This clarification does not provide any new disclosure authority, nor does it authorize the disclosure of return information to contractors that Congress has not previously specifically authorized in the Code. With regard to protection of taxpayer data, agents/contractors are subject to safeguard requirements, redisclosure prohibitions, and civil and criminal penalties for unauthorized disclosures. Accordingly, the regulations do not have an impact on taxpayer privacy.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

List of Subjects in 26 CFR part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(l)–1 also issued under 26 U.S.C. 6103(q).

Section 301.6103(m)–1 also issued under 26 U.S.C. 6103(q). * * *

■ Par. 2. Section 301.6103(l)–1 is added to read as follows:

§ 301.6103(l)–1 Disclosure of returns and return information for purposes other than tax administration.

(a) *Definition.* For purposes of applying the provisions of section 6103(l) of the Internal Revenue Code, the term *agent* includes a contractor.

(b) *Effective date.* This section is applicable January 6, 2004.

■ Par. 3. Section 301.6103(m)–1 is added to read as follows:

§ 301.6103(m)–1 Disclosure of taxpayer identity information.

(a) *Definition.* For purposes of applying the provisions of section 6103(m) of the Internal Revenue Code, the term *agent* includes a contractor.

(b) *Effective date.* This section is applicable January 6, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 16, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–32220 Filed 12–31–03; 11:59 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising a (j)(2) exemption to an existing exemption rule for the Privacy Act system of records notice F090 AF IG B, Inspector General Records. The (j)(2) exemption will increase the value of the system of records for law enforcement purposes.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The proposed rule was previously published on January 11, 2002, at 67 FR 1423. No comments were received; therefore, the rule is being adopted as final.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is amended as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Appendix C to section 806b is amended by adding paragraph a.(6) to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

* * * * *

a. * * *

(6) *System identifier and name:* F090 AF IG B, Inspector General Records.

(i) *Exemption:* (A) Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the Air Force IG's criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also,

information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(iv) *Authority:* (A) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(v) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the AF will grant access to nonexempt material in the records being maintained. Disclosure will be governed by AF's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

Dated: December 24, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–24 Filed 1–5–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2175–IFC]

RIN 0938–AM20

Medicaid Program; Time Limitation on Recordkeeping Requirements Under the Drug Rebate Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: On August 29, 2003, we published a final rule with comment period in the **Federal Register** that finalized two specific provisions: it established new 3-year recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program and set a 3-year time limitation during which manufacturers must report changes to average manufacturer price and best price for purposes of reporting data to us. In addition, it announced the pressing need for codification of fundamental recordkeeping requirements. On September 26, 2003, we issued a correction notice to change the effective date of the August 29, 2003 rule from October 1, 2003 to January 1, 2004.

In this interim final rule with comment period, we are removing the 3-year recordkeeping requirements, replacing them with 10-year recordkeeping requirements on a temporary basis, and soliciting comments on the 10-year requirements.

Manufacturers must retain records beyond the 10-year period if the records are the subject of an audit or a government investigation of which the manufacturer is aware. These provisions contain a sunset date with respect to the record retention requirements to ensure that we reexamine whether the retention rule remain necessary and effective.

This interim final rule with comment period also responds to public comments on the August 29, 2003 final rule with comment period that pertain to the 3-year recordkeeping requirement at § 447.534(h).

EFFECTIVE DATE: This rule is effective January 1, 2004.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 8, 2004.

ADDRESSES: In commenting, please refer to file code CMS–2175–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2175–IFC, P.O. Box 8018, Baltimore, MD 21244–8018.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201,

or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marge Watchorn, (410) 786–4361.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html.*

I. Background

In this interim final rule with comment period, we are removing the 3-year recordkeeping requirements, replacing them with 10-year recordkeeping requirements on a temporary basis, and soliciting comments on the 10-year requirements. Manufacturers must retain records beyond the 10-year period if the records are the subject of an audit or a government investigation of which the manufacturer is aware. These requirements regarding record retention will be in effect until December 31, 2004 or when we publish final recordkeeping requirements in the **Federal Register**, whichever occurs first.

We are also publishing this interim final rule with comment period to address some of the comments received on the final rule with comment period we published on August 29, 2003 (68 FR 51912). Specifically, we are addressing comments pertaining to the 3-year recordkeeping requirements at § 447.534(h). The 3-year recordkeeping requirement for drug manufacturers participating in the Medicaid drug rebate program has caused a significant amount of concern from commenters with regard to the rule's potential effect on the False Claims Act (FCA) and other possible fraud and abuse violations.

II. Provisions of the Final Rule With Comment Period

On August 29, 2003, we published a final rule with comment period (68 FR 51912) in the **Federal Register** that finalized two specific provisions: It established new recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program and set a 3-year time limitation during which manufacturers must report changes to average manufacturer price and best price for purposes of reporting data to us. In addition, it announced the pressing need for codification of recordkeeping requirements. On September 26, 2003, we issued a correction notice (68 FR 51912) to delay the effective date of the August 29, 2003 rule from October 1, 2003 to January 1, 2004.

III. Analysis of and Responses to Public Comments

We received 12 public comments in response to the August 29, 2003 rule. We received comments from State government officials, representatives of the pharmaceutical industry including manufacturers, attorneys, consultants, provider representatives, and a non-profit organization. We received comments on a variety of topics pertaining to the final rule with comment period, as well as comments pertaining to the general Medicaid drug rebate program. For example, several commenters raised issues regarding disputes under the Medicaid drug rebate program, which were not addressed in the August 29, 2003 rule. We are not responding to comments that pertain to the 3-year time limitation for price recalculations at this time; we intend to respond to those comments in a subsequent document that we will publish in the **Federal Register**. In this document, we are summarizing and responding to those comments that pertain to the 3-year recordkeeping requirements at *§ 447.534(h).* These comments and our responses are summarized below:

Recordkeeping Requirements at § 447.534(h)

Comment: One commenter noted that there is significant crossover between data required under the Medicaid drug rebate program, section 340B of the Public Health Service Act, and section 603 of the Veterans Health Care Act (VHCA). The commenter indicated that this rule is inconsistent with the 5-year record retention requirement in the VHCA. The commenter also requested that we define the term, ''authorized government agency,'' as it appeared in section IV of the August 29, 2003 rule. As written, this term implies that if, for example, the Department of Veterans Affairs (DVA) determines that a manufacturer's underlying pricing data contain errors, then the manufacturer must retroactively revise average manufacturer price or best price.

Response: We recognize that there is some cross-over between the data required for the Medicaid drug rebate program, the 340B program, and section 603 of VHCA. However, our regulation is designed to address Medicaid drug rebate best price and average manufacturer price calculations. Due to concerns raised regarding record destruction and the fraud and abuse violations, we also acknowledge the need to increase the record retention period and have chosen a longer 10-year recordkeeping requirement. We expect this longer retention period will alleviate concerns regarding inadvertent record destruction that might impact the 340B program or section 603 of VHCA. We also note that the FCA exists outside the scope of these regulations and applies equally to all of the data provided to the Federal agencies listed and that manufacturers may keep records to support their calculations for all three programs accordingly. With regard to the term, ''authorized government agency,'' our intent was to include any agency with oversight authority and jurisdiction over the Medicaid drug rebate program (for example, the Office of the Inspector General or the Department of Justice).

Comment: One commenter asked for clarification regarding how a manufacturer can provide data supporting its position for periods more than 12 quarters if those data are not to be retained.

Response: In this rule, we are extending the minimum record retention requirement from 3 to 10 years. Therefore, we are requiring that a manufacturer retain data in excess of 12 quarters. Thus, a manufacturer can provide data as may be necessary to substantiate its calculations. Nevertheless, the time limitation for pricing recalculations issued in the August 29, 2003 rule will go into effect on January 1, 2004.

Comment: One commenter expressed concern for manufacturers who find the inconsistent recordkeeping requirements among the Federal drug programs to be confusing. Specifically, if manufacturers are bound by timeframes longer than 3 years, the 3-year recordkeeping requirement in the August 29, 2003 rule is moot. Since we used the 3-year recordkeeping requirement as a reason to justify the 3-year time limitation for price recalculations, we need to reconcile these differences before moving ahead with time limits for pricing changes.

Response: As noted earlier, we acknowledge that different Federal programs may have varying standards in place with regard to recordkeeping; however, we are only regulating the recordkeeping requirements for Medicaid drug rebate pricing data in this rule. We received numerous comments suggesting the 3-year recordkeeping requirements were too short, but none to convince us to expand the time limit on pricing recalculations. We believe that the concerns raised regarding the impact of the recordkeeping requirements on the FCA and State fraud and abuse provisions are compelling. Moreover, because manufacturers are in full possession of the documents that they need to make pricing recalculations, we continue to believe that 3 years is an adequate timeframe to permit manufacturers to recalculate their pricing data. Nevertheless, we want to offer interested parties an opportunity to provide comments about whether a 10-year recordkeeping requirement is the proper timeframe to address the concerns raised on this provision. For these reasons, we are establishing a temporary recordkeeping standard that is longer than the time limitation for price recalculations promulgated in the August 29, 2003 rule and soliciting public comments on the longer standard.

Comment: Two commenters urged us to address comments received on the August 29, 2003 rule and issue a final rule in the near future. One commenter asked when we will publish a final rule.

Response: We are addressing comments that pertain to the provisions in the August 29, 2003 rule in this interim final rule with comment period, which includes a sunset date provision. We anticipate that we will issue a final rule once we have addressed all the comments which we receive on this interim rule.

Comment: Several commenters noted strong opposition to the 3-year recordkeeping requirement, expressing concern with any provision that could permit the destruction of potential evidence of fraud and thereby interfere with efforts to eliminate fraud related to the Medicaid program. One commenter emphasized the importance of the FCA in allowing persons with evidence of fraud against Federal programs or contracts to bring suit on behalf of the government. Another commenter noted that requiring drug manufacturers to maintain their pricing data for only 3 years is a regrettable policy choice that will impose negative financial burdens on providers who participate in the drug pricing program under Section 340B (42 U.S.C. section 256b) of the Public Health Service Act. The commenters noted that there are dozens of pending cases and investigations involving allegations of fraudulent pricing practices by prescription drug manufacturers, many of which look back well beyond the last 3 years. In addition, commenters noted that there are ongoing confidential investigations of similar allegations of fraud that are, by necessity, conducted without notification to the manufacturers. Further, qui tam actions have been filed under seal throughout the country and the preliminary investigation of those matters typically takes place without notice to the manufacturers. The commenters noted that premature destruction of documents concerning average manufacturer prices and best prices could severely hamper these investigations.

Some commenters indicated that a record retention requirement of 6 years, with carve-outs relating to records and data concerning matters under investigation, would strike a more effective balance between efficiency and law enforcement concerns. One commenter recommended a 7-year record retention requirement. Another commenter recommended that we promulgate a recordkeeping requirement with the same substantive standard as that in the FCA: 10 years. That commenter further noted that anything less than a 10-year recordkeeping requirement will seriously undermine the FCA's ability to combat fraud against the Medicaid drug rebate program. Several commenters recommended that we simply remove the recordkeeping requirement.

Response: We concur with commenters who indicated that the 3-year recordkeeping requirement should be increased to address law enforcement concerns. After further consideration, we believe that, due to potential fraud and abuse violations and litigation, a 10-year recordkeeping requirement will be more appropriate and sufficient to ensure a Federal standard with regard to the Medicaid drug rebate program that will not hinder the activities of Federal and State law enforcement officials. Nonetheless, we are soliciting public comment on whether a 10-year recordkeeping requirement is the proper timeframe to address the concerns raised on this provision.

Comment: One commenter questioned the true benefit to manufacturers from the record retention provision in the rule if adjustments can be made to periods older than 3 years under a government investigation.

Response: We recognize the commenter's concerns and note that this provision will have no effect on a manufacturer that correctly calculates its average manufacturer price and best

price. However, we held open the exception to the 3-year period to give all government agencies with oversight authority the opportunity to review manufacturer records and to prevent a manufacturer from claiming that the original 3-year recordkeeping timeframe in any way protected that manufacturer from needing to report correct data. With the new 10-year recordkeeping requirement and its consistency with the FCA, we believe we have made the relationship even clearer.

Comment: In light of ongoing government investigations, one commenter asked whether we still advise manufacturers to discard records that are older than 3 years.

Response: At no time have we advised manufacturers to discard Medicaid drug rebate records. This rule addresses the retention of manufacturer pricing records under the Medicaid drug rebate program and is not designed to provide advice regarding document destruction. We now recognize that the 3-year record retention requirement set forth in the August 29, 2003 rule should be extended in order to address concerns and potential conflicts with Federal and State law enforcement efforts.

We believe that the 10-year recordkeeping requirement is necessary in light of the unique nature of the Medicaid drug rebate program. In particular, we are concerned that because of the way the drug rebate program operates, and the complexity of drug pricing, the program is potentially more susceptible to continuing errors, fraud or abuse. For example, while other programs or activities may be subject to individual, one-time errors, fraud or abuse, the drug rebate program could be more susceptible to such activities via ongoing utilization of a practice, procedure or formula instituted in the past, that is perpetuated and remains undetected. In accordance with section 1927 of the Act and the drug rebate agreement, manufacturers that participate in the drug rebate program submit best price and average manufacturer price with respect to their drugs on a quarterly basis. Manufacturers, not the Secretary, are in possession of the documentation used to substantiate those prices. We believe that the 10-year recordkeeping requirement is necessary in order to preserve critical pricing records and that a timeframe less than 10 years could interfere with efforts to eliminate the documented fraud and abuse related to the drug rebate program.

IV. Provisions of the Interim Final Regulations With Comment Period

This interim final rule with comment period removes the 3-year recordkeeping requirement issued in the August 29, 2003 rule and replaces it with a 10-year recordkeeping requirement from January 1, 2004 through December 31, 2004. This provision will be set forth in 42 CFR part 447 in a new subpart I entitled ''Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements'' at § 447.534(h). Under the 10-year recordkeeping requirement, a drug manufacturer must retain records for 10 years from the date the manufacturer reports that rebate period's data to us. In addition, a manufacturer must retain data beyond the 10-year period if the records are the subject of an audit or a government investigation and if the audit findings or investigation related to the average manufacturer price and best price have not been resolved.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We have, however, submitted a request for emergency approval of the information collection requirements in this final rule. We are requesting an emergency approval because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure compliance with the False Claims Act (FCA). We could not reasonably comply with normal clearance procedures because public harm is likely to result if the agency cannot enforce the requirements of the FCA because records may be destroyed.

As stated earlier in this preamble, we are concerned that, without this final rule and implementation of the longer record retention requirement, manufacturers participating in the Medicaid drug rebate program will destroy records concerning drug price calculations, as well as data supporting those calculations after 3 years. If the requirements cannot be implemented immediately, there is a chance that manufacturers could minimize their potential civil liability under the FCA by destroying their Medicaid rebate records through December 31, 2000. As a result, the effective use of the FCA to investigate fraud regarding the Medicaid drug rebate program could be severely limited at a considerable cost to the Federal and State treasuries.

We are requesting OMB review and approval of this collection, with a 180-day approval period. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Therefore, we are soliciting public comment on each of these issues for the following section of this document that contains information collection requirements:

Section 447.534 of this document contains the following information collection requirements.

Under paragraph (h) of § 447.534, there are two recordkeeping requirements:

(1)(i) A manufacturer must retain records (written or electronic) for 10 years from the date the manufacturer reports that rebate period's data. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations. The 10-year timeframe applies to a manufacturer's quarterly submission of pricing data as well as any revised pricing data subsequently submitted to us.

(ii) A manufacturer must retain records beyond the 10-year period if both of the following circumstances exist: (A) The records are the subject of an audit or of a government investigation related to pricing data that are used in average manufacturer price or best price of which the manufacturer is aware, and (B) The audit findings related to the average manufacturer price and best price have not been resolved.

These information collection requirements, except for the timeframe, already exist. The recordkeeping requirements are in the contract

between the drug manufacturer and CMS, with the retention period not specified. The regulation merely revises timeframes specified for maintaining records in the current regulation.

The burden associated with the recordkeeping is minimal. While we have no data on the staffing costs associated with retaining the data, we estimate that it will cost each manufacturer no more than $1.00, the maximum cost of a compact disc for electronic storage per manufacturer, or a total cost maximum cost of $500 per year. (We base the estimate on the assumption that the manufacturers will store 1 year's data per disc, although it is not necessary to have one disc per year.) The cost to manufacturers that maintain paper copies will be even less as they will just have to keep their paper copy of what they submit to us. Again, the staffing costs cannot be estimated at this time.

We will be collecting data on the cost of staffing.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Julie Brown, CMS–2175–IFC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be emailed to the following address: email: *baguilar@omb.eop.gov*; or faxed to OMB at (202) 395–6974.

VI. Good Cause To Waive the 30-Day Delay in Effective Date

In accordance with section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), final rules ordinarily are not effective until at least 30 days after their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

In this rule, we are removing the 3-year recordkeeping requirement from the August 29, 2003 rule and replacing it with a 10-year recordkeeping requirement for manufacturers that participate in the Medicaid drug rebate program. Due to concerns regarding the FCA and the potential destruction of drug pricing records, we find good cause to waive the 30-day delay in the effective date of the provision in this rule revising the record retention requirement. As discussed below, failure to waive the delay in effective date would be contrary to the public interest. The FCA establishes civil liability for persons or entities who knowingly submit false or fraudulent claims for Federal funds. Essential to the strength of the FCA are its qui tam whistleblower provisions, which allow persons with evidence of fraud against Federal programs or contracts to bring suit on behalf of the government. Qui tam actions are filed under seal and preliminary investigations often take place without notice to manufacturers. While the August 29, 2003 rule would only require manufacturers to keep drug pricing records 3 years following the date the manufacturer first reported the data to us for purposes of average manufacturer price and best price, it could be misinterpreted to permit these records to be discarded for other purposes. As noted, the August 29, 2003 rule would require manufacturers to retain earlier records if they were aware of an unresolved audit or government investigation concerning the manufacturers' average manufacturer price or best price. However, since the manufacturer is often unaware of qui tam investigations, we are concerned that, without this final rule, manufacturers participating in the Medicaid drug rebate program would erroneously conclude that they could discard records concerning drug price calculations, as well as data supporting those calculations that are subject to the FCA and other fraud laws. If the rule is not revised, there is a chance that manufacturers would seek to minimize their potential civil liability under the FCA by discarding their Medicaid rebate records through December 31, 2000. As a result, the effective use of the FCA to investigate fraud regarding the Medicaid drug rebate program could be severely limited at a considerable cost to the Federal and State treasuries. Accordingly, we believe there is a compelling public interest to waive the 30-day delay in effective date for this revision.

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We believe this rule will not have an economically significant effect. We believe the rule will result in neither costs nor savings to the Medicaid program and that additional costs to drug manufacturers will be minimal. We do not consider this rule to be a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less in any 1 year. For purposes of the RFA, pharmaceutical manufacturers with 750 or fewer employees are considered small businesses according to the Small Business Administration's size standards matched to the North American Industry Classification System, effective October 1, 2002, *http://www.sba.gov/size/sizetable2002.html*). Use of the Small Business Administration's size standards matched to North American Industry Classification System is in compliance with the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432. Individuals and States are not included in the definition of a small entity. Because pharmaceutical manufacturers are not required to report their number of employees to the Small Business Administration, we are unable to determine how many of them are

considered small entities. This rule will not have a significant impact on small businesses because although some pharmaceutical manufacturers may be small businesses, we estimated that the cost to manufacturers will be minimal, as described in section VII.B below.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not have a significant impact on small rural hospitals because the provisions contained in this final rule do not pertain to hospitals. Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We anticipate this rule will not impact State governments or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not anticipate this rule will impose direct requirement costs on State governments.

B. Anticipated Effects

1. Effects on Drug Manufacturers

We do not collect information on the costs associated with manufacturer recordkeeping under the Medicaid drug rebate program. Therefore, in the absence of such information, we derived an estimate based on our annual costs of storing electronic pricing data that we receive from approximately 500 drug manufacturers. We store drug product data, including pricing information, for approximately 55,000 drug products. Over the course of the 12 years the Medicaid drug rebate program has been in existence, we have gathered nearly 250 megabytes of information. This information fits on one compact disc. The cost of one blank compact disc is less than $1. We did not have a reasonable proxy available to estimate the staffing costs associated with maintaining the data, so our estimate does not include these costs.

On the whole, we believe this approach is reasonable because it is our understanding that these records are maintained by most manufacturers in an electronic format, while smaller companies may maintain their pricing records in written format. In order to more accurately evaluate the fiscal impact of this provision, we are requesting that manufacturers provide us with information on the costs they would expect to incur pursuant to retaining records for a 10-year period. To the extent possible, we ask that manufacturers make an effort to distinguish between the cost of meeting the 10-year recordkeeping requirement versus other recordkeeping requirements that may apply to the same records.

We do not anticipate that this rule will adversely affect a drug manufacturer's participation in the Medicaid Drug Rebate program or impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There is no impact on contractors or providers.

2. Effects on the Medicaid Program

We are unable to quantitatively address the burden to States with respect to recordkeeping. This rule will not adversely affect a State's ability to obtain manufacturers' rebates or impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There is no impact on Medicaid providers or contractors.

C. Alternatives Considered

Retain the 3-year recordkeeping provision in the August 29, 2003 final rule with comment period.

We considered retaining the 3-year recordkeeping provision in the August 29, 2003 final rule with comment period. However, we believe it is necessary to replace the 3-year provision with a 10-year provision to address concerns raised by commenters regarding Federal and State investigations under the FCA and related anti-fraud provisions.

Establish a different time limitation.

Another alternative would be to establish a longer or a shorter recordkeeping requirement. We did not choose a longer recordkeeping timeframe because we believe a 10-year period will offer immediate protection to address situations where investigations are under seal in qui tam actions. Further, the exception to the 10-year requirement adequately addresses situations where investigations known to manufacturers are not yet resolved. We did not choose a shorter recordkeeping timeframe in this rule because we are concerned that such a timeframe could be misconstrued to lead a manufacturer to believe it could prematurely destroy vital evidence in a case of fraud against the government.

Finalize the 10-year requirement without a sunset date provision.

We considered finalizing the 10-year recordkeeping requirement without a sunset date provision. However, we believe that it is important to offer the regulated community an opportunity to provide comments on the impact that such a provision will have before we finalize the 10-year recordkeeping requirement beyond the December 31, 2004 date. In addition, we want to offer interested parties an opportunity to provide comments about whether a 10-year recordkeeping requirement is the proper timeframe to address the concerns raised on this provision.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV part 447 as set forth below:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart I—Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

■ 2. In § 447.534, paragraph (h)(1) is revised to read as follows:

§ 447.534 Manufacturer reporting requirements.

* * * * *

(h) *Recordkeeping requirements.* (1)(i) A manufacturer must retain records (written or electronic) for 10 years from the date the manufacturer reports that rebate period's data to CMS. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations. The 10-year timeframe applies to a manufacturer's quarterly submission of pricing data as well as any revised pricing data subsequently submitted to CMS.

(ii) A manufacturer must retain records beyond the 10-year period if both of the following circumstances exist:

(A) The records are the subject of an audit or of a government investigation related to pricing data that are used in average manufacturer price or best price of which the manufacturer is aware.

(B) The audit findings or investigation related to the average manufacturer price and best price have not been resolved.

(2) The provisions in paragraph (h)(1) of this section concerning record retention terminate on December 31, 2004.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 29, 2003.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: December 29, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–32329 Filed 12–31–03; 12:47 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7549]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Delaware:					
Kent	City of Dover	Nov. 24, 2003, *Delaware State News*.	Mr. Anthony J. DePrima, AICP, City of Dover Manager, P.O. Box 4751, Dover, Delaware 19903–0475.	Dec. 26, 2003	100006 H
New Castle	Unincorporated areas.	Nov. 10, 2003, Nov. 17, 2003, *The News Journal*.	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	Oct. 30, 2003	105085 G
Florida:					
Duval	City of Jacksonville.	Nov. 21, 2003, Nov. 28, 2003, *The Florida Times-Union*.	The Honorable John Peyton, Mayor of the City of Jacksonville, 4th Floor, City Hall at St. James, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	Nov. 10, 2003	120077 E
Orange	Unincorporated areas.	Nov. 5, 2003, Nov. 12, 2003, *Orlando Sentinel*.	M. Krishnamurthy, Ph.D., P.E., Orange County Stormwater Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	Feb. 11, 2004	120179 E
Georgia:					
Fulton	City of Alpharetta	Oct. 10, 2003, Oct. 17, 2003, *Fulton County Daily Report*.	The Honorable Arthur Letchas, Mayor of the City of Alpharetta, Two South Main Street, Alpharetta, Georgia 30004.	Oct. 3, 2003	130084 E
Fulton	City of Roswell	Oct. 10, 2003, Oct. 17, 2003, *Fulton County Daily Report*.	The Honorable Jere Wood, Mayor of the City of Roswell, 38 Hill Street, Suite 115, Roswell, Georgia 30075.	Oct. 3, 2003	130088 E
Oconee	City of Watkinsville	Dec. 4, 2003, Dec. 11, 2003, *Oconee Enterprise*.	The Honorable W. B. Hardigree, Mayor of the City of Watkinsville, P.O. Box 27, Watkinsville, Georgia 31827.	May 20, 2003	130369 A
Kentucky:					
Jefferson	Unincorporated areas.	Oct. 27, 2003, Nov. 3, 2003, *The Courier-Journal*.	The Honorable Jerry Abramson, Mayor of Metro Louisville/Jefferson County, 527 West Jefferson Street, Suite 400, Louisville, Kentucky 40202.	Oct. 17, 2003	210120 D
	Lexington-Fayette Urban County Government.	Oct. 10, 2003, Oct. 17, 2003, *Lexington Herald-Leader*.	The Honorable Teresa Isaac, Mayor of the Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington, Kentucky 40507.	Jan. 16, 2004	210067 C
Pike	Unincorporated areas.	Nov. 5, 2003, Nov. 12, 2003, *Appalachian News-Express*.	The Honorable William M. Deskins, Pike County Judge/Executive, Pike County Courthouse, 146 Main Street, Pikeville, Kentucky 41501.	Oct. 29, 2003	210298 F
Mississippi:					
Hinds, Rankin, and Madison.	City of Jackson	Oct. 7, 2003, Oct. 14, 2003, *The Clarion-Ledger*.	The Honorable Harvey Johnson, Jr., Mayor of the City of Jackson, P.O. Box 17, 219 South President Street, Jackson, Mississippi 39205–0017.	Jan. 13, 2004	280072 F,G
Madison	Unincorporated areas.	Oct. 7, 2003, Oct. 14, 2003, *The Clarion-Ledger*.	Mr. David H. Richardson, President of the Madison County Board of Supervisors, P.O. Box 608, 146 West Center Street, Canton, Mississippi 39046.	Jan. 13, 2004	280228 D
Madison	City of Ridgeland	Oct. 7, 2003, Oct. 14, 2003, *The Clarion-Ledger*.	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	Jan. 13, 2004	280110 D
Madison	City of Ridgeland	Oct. 13, 2003, Oct. 20, 2003, *The Clarion-Ledger*.	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	Oct. 6, 2003	280110 D
New Jersey:					
Union	Borough of Roselle.	Nov. 14, 2003, Nov. 21, 2003, *Home News Tribune*.	The Honorable Joseph E. Croteau, Mayor of the Borough of Roselle, 210 Chestnut Street, Roselle, New Jersey 07203.	Feb. 20, 2004	340472 A

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New York:					
Ulster	Town of Woodstock.	Nov. 13, 2003, Nov. 20, 2003, *Woodstock Times*.	Mr. Jeremy Wilbur, Supervisor of the Town of Woodstock, 45 Comeau Drive, Woodstock, New York 12498.	May 3, 2004	360868 B
Ulster	Town of Woodstock.	Nov. 21, 2003, Nov. 28, 2003, *Woodstock Times*.	Mr. Jeremy Wilbur, Supervisor of the Town of Woodstock, 45 Comeau Drive, Woodstock, New York 12498.	May 17, 2004	360868 B
North Carolina:					
Durham	City of Durham	Oct. 21, 2003, Oct. 28, 2003, *The Herald-Sun*.	The Honorable William V. Bell, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.	Jan. 27, 2004	370086 G
Puerto Rico	Commonwealth	Nov. 7, 2003, Nov. 14, 2003, *The San Juan Star*.	The Honorable Sila M. Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902–0082.	Feb. 13, 2004	720000 C
South Carolina:					
Charleston	City of Isle of Palms.	Nov. 6, 2003, Nov. 13, 2003, *Post and Courier*.	The Honorable F. Michael Sottile, Mayor of the City of Isle of Palms, P.O. Box 508, Isle of Palms, South Carolina 29451.	Oct. 30, 2003	455416 E
West Virginia:					
Mingo	City of Williamson	Nov. 6, 2003, Nov. 13, 2003, *The Williamson Daily News*.	The Honorable Charles S. West, Mayor of the City of Williamson, 107 East 4th Avenue, P.O. Box 1517, Williamson, West Virginia 25661.	Oct. 29, 2003	540138 D

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 18, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–161 Filed 1–5–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut:					
Fairfield, (FEMA Docket No. D–7539).	Town of Greenwich.	Apr. 9, 2003, Apr. 16, 2003, *Greenwich Time*.	Mr. Richard Bergstresser, Town of Greenwich First Selectman, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.	Apr. 1, 2003	090008 C
New Haven, (FEMA Docket No. D–7539).	City of West Haven.	Apr. 4, 2003, Apr. 11, 2003, *New Haven Register*.	The Honorable H. Richard Borer, Jr., Mayor of the City of West Haven, West Haven City Hall, 355 Main Street, West Haven, Connecticut 06516.	Jul. 11, 2003	090092 C
Florida:					
Volusia, (FEMA Docket No. D–7539).	City of Daytona Beach.	Mar. 28, 2003, Apr. 4, 2003, *Dayton Beach News-Journal*.	The Honorable Baron Asher, Mayor of the City of Daytona Beach, P.O. Box 2451, Daytona Beach, Florida 32115.	Mar. 20, 2003	125099 G
Duval, (FEMA Docket No. D–7539).	City of Jacksonville.	Apr. 16, 2003, Apr. 23, 2003, *The Florida Times-Union*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	Apr. 4, 2003	120077 F
Polk, (FEMA Docket No. D–7539).	City of Lakeland ...	Apr. 18, 2003, Apr. 25, 2003, *The Ledger*.	The Honorable Ralph Fletcher, Mayor of the City of Lakeland, Lakeland City Hall, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5086.	Apr. 10, 2003	120267 F
Broward, (FEMA Docket No. D–7539).	City of Parkland ...	Apr. 10, 2003, Apr. 17, 2003, *The Sun-Sentinel*.	The Honorable Sal Pagliara, Mayor of the City of Parkland, 6600 University Boulevard, Parkland, Florida 33067.	Jul. 17, 2003	120051 F
Polk, (FEMA Docket No. D–7539).	Unicorporated areas.	Apr. 10, 2003, Apr. 17, 2003, *The Ledger*.	Mr. Jim W. Keene, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CA01, Bartow, Florida 33831–9005.	Jul. 17, 2003	12026 F
Indiana: Hamilton, (FEMA Docket No. D–7539).	City of Carmel	Apr. 21, 2003, Apr. 28, 2003, *The Indianapolis Star*.	The Honorable James Brainard, Mayor of the City of Carmel, One Civic Square, Carmel, Indiana 46032.	Jul. 28, 2003	180081 F
Maine: Hancock, (FEMA Docket No. D–7539).	Town of Bar Harbor.	Apr. 17, 2003, Apr. 24, 2003, *Bar Harbor News*.	Ms. Dana Reed, Bar Harbor Town Manager, 93 Cottage Street, Bar Harbor, Maine 04609.	Apr. 4, 2003	230064 E
Michigan: Kent, (FEMA Docket No. D–7539).	Township of Plainfield.	Apr. 18, 2003, Apr. 25, 2003, *The Grand Rapids Press*.	Mr. David Groenleer, Township of Plainfield Supervisor, 616 Belmont Avenue, NE, Belmont, Michigan 49306.	Apr. 8, 2003	260109 B
Pennsylvania: Montgomery, (FEMA Docket No. D–7539).	Borough of Hatboro.	Mar. 31, 2003, Apr. 7, 2003, *The Intelligencer*.	Mr. Joseph F. Pantano, Borough of Hatboro Manager, 414 South York Road, Hatboro, Pennsylvania 19040.	Jul. 7, 2003	420697 D

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Virginia: Independent City, (FEMA Docket No. D–7539).	City of Colonial Heights.	Apr. 4, 2003, Apr. 11, 2003, *Progress Index*.	Mr. Robert Lee Taylor, City of Colonial Heights Manager, P.O. Box 3401, Colonial Heights, Virginia 23834.	Mar. 25, 2003	510039 C
Independent City, (FEMA Docket No. D–7539).	City of Petersburg	Apr. 4, 2003, Apr. 11, 2003, *Progress Index*.	Mr. B. David Canada, City of Petersburg Manager, 135 North Union Street, Petersburg, Virginia 23803.	Mar. 25, 2003	510112 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 18, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–160 Filed 1–5–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Pulaski, (Case No. 02–06–2217P), (FEMA Docket No. P7626).	City of Little Rock	June 25, 2003, Jul. 2, 2003, *Little Rock Free Press*.	The Honorable Jim Dailey, Mayor, City of Little Rock, Little Rock City Hall, Room 203, 500 West Markham, Little Rock, AR 72201.	June 13, 2003	050181
Illinois:					
Cook, (Case No. 03–05–0548P), (FEMA Docket No. P7626).	Unincorporated areas.	Jul. 10, 2003, Jul. 17, 2003, *Orlando Township Messenger*.	Mr. John H. Stroger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, 5th Floor, Chicago, IL 60602.	Oct. 16, 2003	170054
Cook, (Case No. 03–05–1844P), (FEMA Docket No. P7626).	City of Countryside.	Jul. 9, 2003, Jul. 16, 2003, *The Suburban Life*.	The Honorable Carl W. LeGant, Mayor, City of Countryside, City Hall, 5550 East Avenue, Countryside, IL 60525–3689.	Jul. 25, 2003	170079
Michigan: Wayne, (Case No. 02–05–3652P), (FEMA Docket No. P7626).	Township of Canton.	Jul. 10, 2003, Jul. 17, 2003, *Canton Eagle*.	Mr. Thomas Yack, Township Supervisor, Township of Canton, 1150 South Canton Center, Canton, MI 48188.	June 24, 2003	260219
Minnesota: Jackson, (Case No. 03–05–2556P), (FEMA Docket No. P7626).	City of Jackson	May 22, 2003, May 29, 2003, *Jackson County Pilot*.	The Honorable Ray Hansen, Mayor, City of Jackson, 80 West Ashley, Jackson, MN 56143.	Apr. 17, 2003	270213
Missouri: St. Louis, (Case No. 03–07–111P), (FEMA Docket No. P7626).	City of Town and Country.	Jul. 9, 2003, Jul. 16, 2003, *St. Louis Post Dispatch*.	The Honorable David A. Karney, Mayor, City of Town and Country, Municipal Center, 1011 Municipal Center Drive, Town and Country, MO 63131.	Oct. 15, 2003	290389
New Mexico:					
Bernalillo, (Case No. 03–06–200P), (FEMA Docket No. P7626).	City of Albuquerque.	Jul. 8, 2003, Jul. 15, 2003, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	June 13, 2003	350002
Bernalillo, (Case No. 03–06–200P), (FEMA Docket No. P7626).	Unincorporated areas.	Jul. 8, 2003, Jul. 15, 2003, *Albuquerque Journal*.	Mr. Tim Cummins, Chairperson, Bernalillo County Commission, One Civic Plaza, N.W., Albuquerque, NM 87102.	June 13, 2003	350001
Oklahoma:					
Oklahoma, (Case No. 02–06–654P), (FEMA Docket No. P7626).	City of Oklahoma City.	June 23, 2003, June 30, 2003, *The Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, 3rd Floor, Oklahoma City, OK 73102.	Sept. 29, 2003	405378
Tulsa, (Case No. 03–06–1535P), (FEMA Docket No. P7626).	City of Tulsa	June 23, 2003, June 30, 2003, *Tulsa World*.	The Honorable Bill La Fortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	Sept. 29, 2003	405381
Texas:					
Denton, (Case No. 03–06–181P), (FEMA Docket No. P7626).	City of Argyle	Jul. 10, 2003, Jul. 17, 2003, *The Argyle Sun*.	The Honorable Yvonne Jenkins, Mayor, City of Argyle, 506 North Highway 377, Argyle, TX 76226.	June 13, 2003	480775
Tarrant, (Case No. 03–06–849P), (FEMA Docket No. P7626).	City of Arlington ...	Jul. 9, 2003, Jul. 16, 2003, *Arlington Morning News*.	The Honorable Elzie Odom, Mayor, City of Arlington, 101 West Abram Street, Box 231, Arlington, TX 76004–0231.	June 25, 2003	485454
Bexar, (Case No. 02–06–2298P), (FEMA Docket No. P7626).	Unincorporated areas.	June 30, 2003, Jul. 7, 2003, *San Antonio Express News*.	The Honorable Nelson W. Wolff, Judge, Bexar County, Bexar County Courthouse, 100 Dolorosa, Suite 120, San Antonio, TX 78205.	June 6, 2003	480035

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas, (Case No. 03–06–844P), (FEMA Docket No. P7626).	City of Carrollton	June 25, 2003, Jul. 2, 2003, *Carrollton Leader*.	The Honorable Mark Stokes, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75006.	Oct. 1, 2003	480167
Collin, (Case No. 02–06–1413P), (FEMA Docket No. P7626).	Unincorporated areas.	June 25, 2003, Jul. 2, 2003, *Plano Star Courier*.	The Honorable Ron Harris, Judge, Collin County, 210 South McDonald Street, McKinney, TX 75069.	Oct. 1, 2003	480130
Dallas, (Case No. 03–06–844P), (FEMA Docket No. P7626).	City of Coppell	June 25, 2003, Jul. 2, 2003, *Coppell Gazette*.	The Honorable Candy Sheehan, Mayor, City of Coppell, 255 Parkway Boulevard, P.O. Box 9478, Coppell, TX 75019.	Oct. 1, 2003	480170
Denton, (Case No. 03–06–181P), (FEMA Docket No. P7626).	City of Denton	Jul. 10, 2003, Jul. 17, 2003, *Denton Record Chronicle*.	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	June 13, 2003	480194
El Paso, (Case No. 02–06–1458P), (FEMA Docket No. P7626).	City of El Paso	June 24, 2003, Jul. 1, 2003, *El Paso Times*.	The Hon. Raymond Caballero, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, TX 79901.	June 5, 2003	480214
Collin, (Case No. 02–06–1413P), (FEMA Docket No. P7626).	Town of Fairview	June 25, 2003, Jul. 2, 2003, *Plano Star Courier*.	The Honorable Don Phillips, Mayor, Town of Fairview, 500 S. Highway 5, Fairview, TX 75069.	Oct. 1, 2003	481069
Tarrant, (Case No. 03–06–448P), (FEMA Docket No. P7626).	City of Fort Worth	June 30, 2003, Jul. 7, 2003, *The Star Telegram*.	The Honorable Kenneth Barr, Mayor, City of Forth Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Oct. 6, 2003	480596
Dallas, (Case No. 02–06–2315P), (FEMA Docket No. P7626).	City of Irving	Jul. 10, 2003, Jul. 17, 2003, *The Irving Morning News*.	The Honorable Joe H. Putnam, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	June 24, 2003	480180
Denton, (Case No. 03–06–844P), (FEMA Docket No. P7626).	City of Lewisville ..	June 25, 2003, Jul. 2, 2003, *Lewisville Leader*.	The Honorable Gene Carey, Mayor, City of Lewisville, P.O. Box 299002, 1197 West Main Street, Lewisville, TX 75029.	Oct. 1, 2003	480195
Gregg and Harrison, (Case No. 02–06–1532P), (FEMA Docket No. P7626).	City of Longview ..	June 30, 2003, Jul. 7, 2003, *Longview News Journal*.	The Honorable Murray Moore, Mayor, City of Longview, P.O. Box 1952, Longview, TX 75606.	Oct. 6, 2003	480264
Tarrant, (Case No. 02–06–1674P), (FEMA Docket No. P7626).	City of Mansfield ..	June 12, 2003, June 19, 2003, *Mansfield News Mirror*.	The Honorable David Harry, Mayor, City of Mansfield, No. 2 Brookway Court, Mansfield, TX 76063.	Sept. 18, 2003	480606
Dallas, (Case No. 03–06–682P), (FEMA Docket No. P7626).	City of Mesquite ..	May 22, 2003, May 29, 2003, *Mesquite Morning News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	May 2, 2003	485490
Brazoria, (Case No. 03–06–176P), (FEMA Docket No. P7626).	City of Pearland ...	June 25, 2003, Jul. 2, 2003, *Pearland Reporter News*.	The Honorable Thomas Reid, Mayor, City of Pearland, 3519 Liberty Drive, Pearland, TX 77581.	Jul. 11, 2003	480077

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 18, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–159 Filed 1–5–04; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
INDIANA	
Adams County	
Yellow Creek:	
At the confluence with St. Marys River	*790
Approximately 1,750 feet upstream of Norfolk and Western Rail	*790
Adams County (Unincorporated Areas)	
Blue Creek:	
At the confluence with St. Marys River	*793
At U.S. Route 27	*836
Adams County (Unincorporated Areas)	
St. Marys River	
At South County Line Road	*787
At the upstream state boundary	*794
Adams County (Unincorporated Areas), City of Decatur	
Kohne Drain No. 1:	
At confluence with Holthouse Ditch	*786
Just downstream of County Road 050 West	*796
City of Decatur, Adams County (Unincorporated Areas)	
Borum Run:	
At the confluence with St. Marys River	*789
Approximately 0.98 mile upstream of High Street	*789
City of Decatur, Adams County (Unincorporated Areas)	
Koos Ditch	
At the confluence with St. Marys River	*788
Approximately 1,175 feet upstream of Piqua Road	*788
City of Decatur, Adams County (Unincorporated Areas)	
Holthouse Ditch:	
At the confluence with St. Marys River	*786
Approximately 1,400 feet downstream of Nottman Road	*787
City of Decatur, Adams County (Unincorporated Areas)	
Adams County (Unincorporated Areas)	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Maps available for inspection at the Office of the Adams County Board of Commissioners, 313 West Jefferson, Room 251, Decatur, Indiana.	
City of Decatur	
Maps available for inspection at the Decatur City Hall, 225 West Monroe Street, Decatur, Indiana.	
OHIO	
Hamilton County (Unincorporated Areas) (FEMA Docket No. D–7562)	
Congress Run:	
Approximately 0.7 mile upstream of Ridgeway Avenue	*623
Approximately 0.9 mile upstream of Ridgeway Avenue	*630
City of Wyoming	
Duck Creek:	
Approximately 0.4 mile downstream of Redbank Road	*510
Approximately 0.5 mile upstream of Railroad	*549
Hamilton County (Unincorporated Areas), Village of Fairfax	
East Fork Mill Creek:	
At the confluence with Mill Creek	*584
At the City of Sharonville corporate limits	*587
City of Sharonville	
Little Miami River:	
Approximately 0.9 mile downstream of Railroad	*501
Approximately 0.6 mile upstream of Railroad	*593
Village of Mariemont, City of Loveland	
Mill Creek:	
Just Upstream of the Barrier Dam	*480
At the City of Sharonville corporate limits	*586
Cities of Cincinnati, Reading, Sharonville, and St. Bernard, Villages of Elmwood Place, Evendale, and Lockland	
North Branch Sycamore Creek:	
Approximately 0.61 mile downstream of U.S. Route 22	*696
Approximately 0.6 mile downstream of U.S. Route 22	*697
Village of Indian Hill	
Polk Run/Lake Chetak Creek:	
Approximately 0.8 mile downstream of East Kemper Road	*586
Approximately 1,390 feet upstream of East Kemper Road	*690
Hamilton County (Unincorporated Areas)	
Sharon Creek:	
At the confluence with Mill Creek	*571
Approximately 320 feet upstream of confluence with Mill Creek	*571
City of Evendale	
Sycamore Creek:	
Approximately 550 feet downstream of Railroad	*729
Approximately 250 feet downstream of Carmargo Road	*742
Village of Indian Hill	
West Fork Mill Creek:	
Approximately 1.6 miles upstream of Riddle Road	*614
Approximately 0.9 mile upstream of Riddle Road	• 594
Village of Woodlawn	
O'Bannon Creek:	
At the confluence with Little Miami River	• 591
At the Hamilton County corporate limits	• 591
Hamilton County (Unincorporated Areas)	
Maps available for inspection at the Hamilton County Department of Public Works, 138 East Court Street, Cincinnati, Ohio.	
City of Cincinnati	
Maps available for inspection at the Cincinnati City Hall, 801 Plum Street, Cincinnati, Ohio.	
Village of Elmwood Place	
Maps available for inspection at the Elmwood Place Village Hall, 6118 Vine Street, Elmwood Place, Ohio.	
Village of Evendale	
Maps available for inspection at the Evendale Village Hall, 10500 Reading Road, Evendale, Ohio.	
Village of Fairfax	
Maps available for inspection at the Fairfax Village Hall, 5903 Hawthorne Street, Fairfax, Ohio.	
Village of Lockland	
Maps available for inspection at the Lockland Village Hall, 101 North Cooper Avenue, Lockland, Ohio.	
City of Loveland	
Maps available for inspection at the Loveland Building and Zoning Department, 120 West Loveland Avenue, Loveland, Ohio.	
Village of Mariemont	
Maps available for inspection at the Mariemont Village Hall, 6907 Wooster Pike, Mariemont, Ohio.	
City of Reading	
Maps available for inspection at the Reading City Hall, 1000 Market Street, Reading, Ohio.	
City of Sharonville	
Maps available for inspection at the Sharonville City Hall, 10900 Reading Road, Sharonville, Ohio.	
City of St. Bernard	
Maps available for inspection at the St. Bernard City Hall, 110 Washington Avenue, St. Bernard, Ohio.	
Village of Woodlawn	
Maps available for inspection at the Woodlawn Village Hall, 10141 Woodlawn Boulevard, Woodlawn, Ohio.	
Village of Wyoming	
Maps available for inspection at the Wyoming City Hall, 800 Oak Avenue, Wyoming, Ohio.	

Dated: December 18, 2003.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–158 Filed 1–5–04; 8:45 am]

BILLING CODE 9110–12–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be

obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
MASSACHUSETTS	
North Reading (Town), Middlesex County (FEMA Docket No. D–7576)	
Martins Brook:	
At Park Street	*74
At outlet of Martins Pond	*80
Skug River:	
At confluence with Martins Pond	*80
Approximately 150 feet upstream of the corporate limits	*84
Martins Pond:	
At its outlet into Martins Brook	*80
At confluence of Skug River	*80
Bear Meadow Brook:	
At Haverhill Street	*72
Approximately 1,125 feet upstream of Haverhill Street	*74
Maps available for inspection at the North Reading Town Hall, 235 North Street, North Reading, Massachusetts.	
NEW JERSEY	
Greenwich (Township), Warren County (FEMA Docket No. D–7572)	
Merrill Creek:	
Approximately 30 feet upstream of confluence with Pohatcong Creek	*262
Approximately 150 feet downstream of North Main Street	*337
Merrill Creek (Left Channel):	
At the downstream confluence with Merrill Creek	*270
Approximately 35 feet downstream from upstream confluence with Merrill Creek	*343
Maps available for inspection at the Engineer's Office, 205 Route 31 North, Washington, New Jersey.	
NEW YORK	
Schuyler Falls (Town), Clinton County (FEMA Docket No. D–7566)	
Saranac River:	
At upstream corporate limits	*736
At downstream corporate limits	*245
Maps available for inspection at the Schuyler Falls Town Office, 997 Mason Street, Schuyler Falls, New York.	
Victor (Village), Ontario County (FEMA Docket No. D–7572)	
Great Brook:	
At the downstream corporate limits	*555
Approximately 1,150 feet upstream of CONRAIL	*585
Maps available for inspection at the Victor Village Office, 60 East Main Street, Victor, New York.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 18, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–157 Filed 1–5–04; 8:45 am]

BILLING CODE 9110–12–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Goleta (City), Santa Barbara County, (FEMA Docket No.# B–7439)	
Maria Ygnacia Creek:	
Approximately 900 feet downstream of Hollister Avenue	*36
Approximately 80 feet downstream of confluence of San Antonio Creek	*64
Maps are available for inspection at City Hall, 6500 Hollister Avenue, Goleta, California.	
Santa Barbara County, (FEMA Docket No.# B–7435)	
Atascadero Creek:	
Approximately 4,400 feet downstream of Patterson Avenue	*14
Approximately 2,850 feet upstream of Arroyo Road	*83
Maria Ygnacia Creek:	
At confluence with Atascadero Creek	*27
Approximately 1,400 feet upstream of San Marcos Road	*158
East Fork Maria Ygnacia Creek:	
At confluence with Maria Ygnacia Creek	*154
Approximately 1,450 feet upstream of a private bridge	*250
San Antonio Creek:	
At confluence with Maria Ygnacia Creek	*68
Approximately 500 feet upstream of Cathedral Oaks Road	*165
Maps are available for inspection at the Flood Control District Office,123 Anapamu Street, Santa Barbara, California.	
SOUTH DAKOTA	
Cheyenne River Sioux Tribe, Dewey and Ziebach Counties, (FEMA Docket No.# B–7439)	
Bear Creek:	
Approximately 5,800 feet upstream of State Route 65	+2,345
Approximately 1,200 feet upstream of U.S. Route 212	+2,365
Cherry Creek:	
At confluence with Cheyenne River	+1,723
Approximately 7,000 feet upstream of Main Street	+1,735
Cheyenne River:	
Approximately 6,200 feet upstream of confluence of Plum Creek	+1,714
Approximately 17,300 feet upstream of confluence of Cherry Creek	+1,728
Virgin Creek:	
Approximately 5,800 feet downstream of U.S. Route 212	+1,896

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 3 miles upstream of U.S. Route 212	+1,950

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the Economic Development Center, Eagle Butte, South Dakota.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD).	Communities affected
SOUTH DAKOTA		
Hughes County (FEMA Docket No.# B–7435)		
Missouri River:		
Approximately 8 miles downstream from the confluence with Higers Gulch	+1,425	Hughes County (Uninc. Areas), and City of Pierre
Approximately 3 miles upstream of the confluence with the Whisky Gulch	+1,431	

ADDRESSES

Unincorporated Areas Hughes County

Maps are available for inspection at City Hall, 222 East Dakota Avenue, Pierre, South Dakota.

City of Pierre

Maps are available for inspection at City Hall, 222 East Dakota Avenue, Pierre, South Dakota.

Stanley County (FEMA Docket No.# B–7435)		
Missouri River:		
Approximately 8 miles downstream from the confluence with the Bad River	+1,425	Stanley County (Uninc. Areas), and City of Fort Pierre
Approximately 4 miles upstream of the confluence with the Bad River	+1,431	

ADDRESSES

Unincorporated Areas Stanley County

Maps are available for inspection at 8 East Second Avenue, Fort Pierre, South Dakota.

City of Fort Pierre

Maps are available for inspection at 8 East Second Avenue, Fort Pierre, South Dakota.

Charles Mix County (FEMA Docket No.# B–7439)		
Unnamed Creek (near Wagner):		
Approximately 400 feet upstream of 396th Avenue	*1,413	Yankton Sioux Tribe and City of Wagner
Approximately 600 feet downstream of 394th Avenue	*1,458	
Left Bank Tributary of Mosquito Creek (near Marty):		
Approximately 1,400 feet downstream of 303rd Street	*1,434	Yankton Sioux Tribe
Approximately 1,950 feet upstream of 303rd Street	*1,458	

ADDRESSES

Yankton Sioux Tribe

Maps are available for inspection at 100 North Main Street, Marty, South Dakota.

City of Wagner:

Maps are available for inspection at City Hall, 106 Sheridan Avenue, Southeast, Wagner, South Dakota.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD).	Communities affected
NORTH DAKOTA AND SOUTH DAKOTA		
Standing Rock Indian Reservation (FEMA Docket No.# B–7441)		
Cannonball River:		

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) +Elevation in feet (NAVD).	Communities affected
Approximately 4,300 feet downstream of Rice Street	+1,658	Standing Rock Indian Reservation, ND and City of Solen
Approximately 7,700 feet upstream of Rice Street	+1,668	
Grand River (at Bullhead):		
Approximately 4,000 feet downstream of confluence of Rock Creek	+1,759	Standing Rock Indian Reservation, SD
Approximately 4,600 feet upstream of confluence of Stink Creek	+1,774	
Grand River (at Little Eagle):		
Approximately 3.4 miles downstream of the State Route 63	+1,638	Standing Rock Indian Reservation, SD
Approximately 2,000 feet upstream of Old Irrigation Dam	+1,651	
Oak Creek:		
Approximately 7,500 feet downstream of Sewage Lagoons	+1,622	Standing Rock Indian Reservation, SD
Approximately 2,900 feet upstream of Old Irrigation Dam	+1,646	
Rock Creek:		
At confluence with Grand River (at Bullhead)	+1,761	Standing Rock Indian Reservation, SD
Approximately 7,500 feet upstream of Bullhead Road	+1,793	

ADDRESSES

Standing Rock Indian Reservation, ND and SD

Maps are available for inspection at the Department of Tribal Land Management, South River Road, Fort Yates, North Dakota.

City of Solen

Maps are available for inspection at the Engineering Department, 306 Leach Street, Solen, North Dakota.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 24, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–166 Filed 1–5–04; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 12

[USCG–2003–14500]

RIN 1625–AA81

Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Documents (MMDs)

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule describes enhancements to the application procedures for the Merchant Mariner Licensing and Documentation program. These are necessary to improve maritime safety and promote the national security interests of the United States. The enhancements should serve these ends.

DATES: Effective Date: This interim rule is effective January 6, 2004.

Comments: Comments and related material must reach the Docket Management Facility on or before April 5, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–14500 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal rulemaking Portal: *http://www.regulations.gov.*

Documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–14500 and will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Commander Dave Dolloff, Project Manager, National Maritime Center (NMC), Coast Guard, telephone 202–493–1021. If you have questions on viewing the docket, call Ms. Angela M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2003–14500), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by

11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

On Thursday, February 20, 2003, the Coast Guard published, in the **Federal Register**, a Notice of Policy entitled: ''Merchant Mariners'' Documents: Forms and Procedures for Renewals and Issuances'' [68 FR 8326]. This Notice informed the public that on February 3, 2003, the Coast Guard had suspended issuing all MMDs using a previous form (CG–2838 [Rev. 7–94]) and had begun renewing them using a new form (CG–2838 [Rev. 09/02]). On Tuesday, April 8, 2003, the Coast Guard issued another Notice of Policy, under the same title [68 FR 17064], announcing that it had begun to issue original MMDs on February 28, 2003, also using the new identification card. This new card is more tamper-resistant. Possession of the card continues to serve as verification of an individual's qualifications to work on board certain U.S.-flagged vessels.

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This interim rule instates changes previously announced and implemented that are necessary to protect the national security interests of the United States. The Coast Guard finds that notice before the effective date of these changes is unnecessary, impracticable, and contrary to the public interest, within the meaning of 5 U.S.C. 553(f)(B) of the Administrative Procedure Act (APA).

In response to national security concerns, the Coast Guard temporarily suspended issuing MMDs to examine the MMD program. Enhancements to the security procedures for issuing MMDs were made, and the Coast Guard resumed issuing the documents using the augmented procedures. The security-related processes needed to be implemented before the security-enhanced MMD cards could be issued; not issuing MMDs for a prolonged period would have been unacceptable and would have had a detrimental effect on merchant mariners who are required to possess these documents to obtain work on board vessels of 100 gross tons or more.

Pursuant to 5 U.S.C. 553(d)(3) and for the reasons stated above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

46 U.S.C. 2103 gives the Secretary of the Department in which the Coast Guard is operating general superintendence over merchant marine personnel and authorizes the issuance of regulations promoting maritime safety interests. 46 U.S.C. Chapter 73 addresses MMDs and authorizes the Coast Guard to issue MMDs to qualified mariners. Mariners must hold MMDs to serve on board U.S.-flagged merchant vessels of 100 gross tons or more. (46 U.S.C. 8701). The MMD functions as a certificate of identification and a certificate of service, specifying each rating for which the holder is qualified (46 U.S.C. 7302(a)). Additionally, the MMD is issued with an appropriate endorsement, to qualified tankermen. An MMD may be issued for five years, and renewed for additional five-year periods (46 U.S.C. 7302(f)). Coast Guard regulations governing the certification of seamen, including issuance and renewal of MMDs, appear at 46 CFR Part 12.

46 U.S.C. 7302(d) allows the Secretary to review the criminal record of an individual who applies for an MMD. 46 CFR 12.02–4 states that the Officer in Charge, Marine Inspection, may require a criminal record check of an applicant for an MMD. Moreover, 46 U.S.C. 7302(c) prohibits the Secretary from issuing an MMD unless the individual applying for the MMD makes available to the Secretary any information related to an offense described in section 205 of the National Driver Register (NDR) Act of 1982, as amended (49 U.S.C. 30304). Additionally, the President under the Magnuson Act, 50 U.S.C. 191, may institute such measures and issue such rules and regulations to safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, to vessels, harbors, ports, and waterfront facilities in the United States and all territory and water, continental or insular, subject to the jurisdiction of the United States. By Executive Order 10173 dated October 18, 1950, and subsequent Executive Orders, the President implemented his authority under the Magnuson Act by regulation at Title 33 CFR Part 6. 33 CFR 6.10–1 says that no person shall be issued a document required for employment on a merchant vessel of the United States, nor shall any person be employed on a merchant vessel of the United States unless the Commandant is satisfied that the character and habits of life of such person are such as to authorize the belief that the presence of the individual on board would not be adverse to the security of the United States.

The Coast Guard will implement the requirements of 33 CFR 6.10–1 to evaluate the character and habits of life of MMD applicants and the Board appeals process for persons refused issuance based on character and habits of life required by 33 CFR 6.10–9. For denials not based on character and habits of life, the Coast Guard will continue to use the process for certification of seamen set out in 46 CFR Part 12.

The purpose of this interim rule is to amend 46 CFR Part 12. Since February 3, 2003, all eligible mariners, renewing or conducting certain other transactions involving existing MMDs, have been receiving more tamper-resistant MMDs. After February 28, 2003, all eligible original MMD applicants have been receiving more tamper-resistant MMDs.

The more tamper-resistant MMDs are designed to address marine safety and national security concerns. The new MMDs are similar in appearance to the old ones, but embody several improvements for increased security, including features to deter counterfeiting and graphics that enhance the document's professional

appearance. The new MMD allows for a more detailed description of a mariner's qualifications than did the old one. Those renewing their documents will be subject to the renewal requirements set out in 46 CFR 12.02–27.

At the time of this rule, mariners may continue to apply for renewal of the MMD and certain other transactions involving an existing MMD by mail, but will have to make a personal appearance at least once during the application process, to have their fingerprints taken, show proof of identity, and return the old MMD to the Coast Guard. For their convenience, they may elect to make an appearance at any of the 17 Regional Exam Centers (RECs) in the United States.

To ensure the issuance of MMDs only to eligible mariners, the Coast Guard requires fingerprints, and the revalidation and update of the information provided on the original MMD application. We will verify the information provided and conduct a criminal record review and a safety and a security check of the applicant in accordance with applicable law. We may disapprove an application for an MMD if the criminal record review and safety and security check leads the Coast Guard to determine that the applicant's criminal record or character and habits of life demonstrate that the applicant is not a safe and suitable person. A safe and suitable person eligible for an MMD is a person who, as determined by the appropriate Coast Guard official, possesses the character and habits of life to warrant the belief that their presence aboard vessels of the United States is not adverse to the security of the United States. If an application is disapproved, the applicant will be notified, in writing, of the reason(s) for disapproval and of the appeal process available to him or her. The applicant will be notified in writing of the reason(s) for disapproval, unless the Coast Guard determines that such disclosure of information is prohibited by law, regulation, or agency policy, in which case the reason(s) will not be disclosed. No MMD transactions will be performed pending a decision on an appeal.

If you would like more information on the background of this rulemaking, and of the Coast Guard's licensing and documentation program, refer to the Notices discussed in the *Regulatory Information* or contact the offices noted in **FOR FURTHER INFORMATION CONTACT**. For questions on submitting an application for the issuance of an MMD, call your nearest REC, a list of which appears in 46 CFR 12.01–7, or on the internet at *http://www.uscg.mil/STCW/index.htm.*

Discussion of Interim Rule

This rulemaking identifies the authorities for evaluating mariner applications with respect to qualifications and character and habits of life, which may disqualify a mariner from receiving an MMD and modifies certain application and administrative processes involved in issuing MMDs. It will—

- Provide new definitions of the terms ''conviction'', ''safety and security check'', and ''safe and suitable person'';
- Require that an applicant disclose foreign and military convictions on the application;
- Describe the criminal record review and a safety and security check conducted on MMD applicants;
- Require that an applicant provide fingerprints during the application process for an MMD in a form and manner specified by the Coast Guard;
- Require that the applicant appear in person at an REC at least one time during the application process to prove their identity and submit fingerprints in a form and manner specified by the Coast Guard;
- Describe authority for the Coast Guard to review and deny issuance of an MMD for applicants whose ''character and habits of life'' are adverse to the security of the United States;
- Describe how an applicant may ''prove'' identity and require applicant to produce two forms of identification, one of which must contain a picture;
- Describe acceptable forms for proof of citizenship;
- Remove from 46 CFR 12.02–13 reference to ''Shipping Commissioner'';
- Remove from 46 CFR 12.02–17 the requirement that a fingerprint be affixed to an MMD form;
- Eliminate the requirement that a mariner's Social Security Number (SSN) be placed on the MMD;
- Replace the term ''missing'' in 46 CFR 12.02–23 with the term ''lost'';
- Remove the description of internal Coast Guard administrative procedures from 46 CFR 12.02–24 and require the applicant to communicate the loss of an MMD to the Coast Guard by letter;
- Require the submission of a complete application before processing; and,
- Require the surrender of an old MMD to the Coast Guard on issuance of a new one.

Regulatory Evaluation

This interim rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Moreover, the Office of Management and Budget (OMB), under that Order, has not reviewed it. And it is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

A draft Regulatory Evaluation under the regulatory policies and procedures of DHS follows:

Costs

This interim rule will amend certain requirements in 46 CFR Part 12 for how merchant mariners and prospective mariners will apply for MMDs.

This interim rule will require all applicants to process MMDs at an REC. The rule requires an applicant to appear at least once in the application process, even if making an application by mail, and requires that fingerprinting to be conducted by the Coast Guard for all types of MMD applications.

The total annual population of affected MMD applicants is 28,243 mariners. This total includes 11,210 applicants for original (new) MMDs and 17,033 applicants for reissued (renewal and duplicate) MMDs. This is based on 2002 data received from the Coast Guard's National Marine Center (NMC).

Not all mariners incur cost from this interim rule. The subset of the affected population that incurs costs comprises those mariners who (1) previously applied for original MMDs by mail and were not fingerprinted at an REC, and (2) previously applied for reissue MMDs and were not fingerprinted at an REC.

From discussions with the Coast Guard's NMC, we estimate the percentage of mariners who apply for original MMDs and incur a cost to be 20 percent of the 11,210 original MMD applicants, or 2,242 mariners ($0.20 \times 11{,}210$ original MMD applicants = 2,242 mariners).

We also estimate the percentage of mariners who apply for reissued MMDs and incur a cost to be 70 percent of the 17,033 reissue MMD applicants, or 11,923 mariners ($0.70 \times 17{,}033$ reissue MMD applicants = 11,923 mariners).

Based on the percentage of applicants who incur a cost discussed above, the total annual quantity of mariners who incur a cost by this final rule is 14,165 mariners (2,242 original MMD applicants + 11,923 reissue MMD applicants = 14,165 total mariners).

The period of analysis is from 2003 to 2007. We use a five-year period because all current documented mariners must renew their MMDs once every five

years. Therefore, this five-year period will cover a complete MMD renewal cycle—giving an accurate snapshot of the total cost of the rule.

The costs of this final rule include (1) the cost of mariners' time at an REC, and (2) the cost of mariners' travel to and from an REC. In all costs we assume an average mariner's wage rate as a proxy for the opportunity cost of a mariner's time spent at the REC and the time spent traveling to and from the REC. We also assume per diem reimbursement rates as proxy unit costs for travel expenses. Table 1 presents the basic unit cost assumptions and sources that we used in this analysis of the final rule.

TABLE 1.—SUMMARY OF BASIC UNIT COSTS

Item	Unit cost	Source reference
Opportunity Cost of Mariner Time.	$22/hour	This wage-rate is based on information from the 2001 National Occupation Employment and Wage Statistics published by the Bureau of Labor Statistics.
Mileage	$0.36/mile	2003 Privately Owned Vehicle (POV) Reimbursement Rates for Automobiles in Amendment 112 of the *Federal Travel Regulation,* published January 6, 2003, and effective January 1, 2003, by the General Services Administration.
Incidentals and Meals	$50/day	The average incidentals and meals reimbursement rate for the 17 current REC locations. The General Services Administration provides rates for the Continental US. The Department of Defense provides rates for the Non-Continental US. These rates are part of the *Federal Travel Regulation* and are frequently updated.
Lodging	$120/night	The average lodging reimbursement rate for the 17 current REC locations. The General Services Administration (GSA) provides rates for the Continental US. The Department of Defense provides rates for the Non-Continental US. These rates are part of the *Federal Travel Regulation* and frequently updated.

Cost of REC Time

We assume, on average, a mariner will spend one hour at the REC submitting an application and being fingerprinted. This time estimate is based on discussions with Coast Guard personnel familiar with REC operations and customer service. We realize some applicants may take more time and some may take less time; however, we believe one hour to be a reasonable estimate of the average time a mariner will spend at an REC.

We estimate the cost of a mariner's time at the REC to be $22 (1 hour × $22/hour cost of time = $22). The estimated annual cost of REC time for affected mariners is $311,630 ($22/mariner × 14,165 total applicants = $311,630).

Travel Cost

We assume round-trip travel, to an REC, to take either one-day or require an overnight stay. Furthermore, we believe most mariners live within close proximity to an REC. According to data from the Coast Guard's NMC, at least 70 percent of MMD applicants live within one-day round-trip travel to and from an REC and the remaining 30 percent may require an overnight stay. We also assume mariners will drive to an REC regardless of the distance. While there may be some mariners that take public transportation or use another mode of travel, we believe, on average, most mariners will drive themselves to an REC.

We estimate the one-day and overnight travel cost as follows:

One-Day Round-Trip Travel

For an applicant within one-day round-trip travel to and from an REC, we assume the cost to include the mileage, the opportunity cost of the time spent traveling, and incidentals.

We estimate the one-day round-trip driving distance and time to be 100 miles in 4 hours (or 50 miles one-way in 2 hours driving time). While some mariners will drive more than this and some will drive less, we believe 100 miles driving distance, in 4 hours, to be a reasonable average estimate of the one-day round-trip travel distance and time. We also assume the cost for one-day round-trip incidentals to be $50 and the mileage reimbursement to be $0.36/mile.

The estimated cost per mariner for one-day round-trip travel is $174 (100 roundtrip miles × $0.36/mile reimbursement rate + 4 travel hours × $22/hour cost of time + $50/day incidentals = $174). The estimated annual cost for one-day round-trip travel for affected mariners is $1,725,297 ($174/mariner × .70 {percent one-day travel} × 14,165 mariners = $1,725,297).

Overnight Travel

For an applicant having to travel and stay overnight, we assume the cost to include mileage, the opportunity cost of time spent traveling, lodging, and incidentals.

We estimate the overnight round-trip driving distance and time, to an REC, to be 200 miles in 8 hours (double the one-day round trip scenario). While some mariners will drive more than this and some will drive less, we believe 200 miles driving distance, in 8 hours, to be a reasonable average estimate of the distance and time a mariner would drive for overnight travel to a REC. We also assume the cost for lodging and incidentals for overnight travel to be $220 (2 × $50/day incidentals + $120/night lodging = $220).

The estimated cost per mariner for overnight travel is $468 (200 roundtrip miles × $0.36/mile reimbursement rate + 8 travel hours × $22/hour cost of time + $220 lodging and incidentals = $468). The estimated annual cost of overnight travel for affected mariners is $1,988,766 ($468/mariner × .30 {percent overnight travel} × 14,165 mariners = $1,988,766).

Total National Cost

The annual cost of this interim rule, consisting of the cost of travel and time for affected mariners, is estimated to be $4 million (non-discounted). Table 2 summarizes the total annual cost of the rule to industry.

TABLE 2.—SUMMARY OF ANNUAL COST

Item	Opportunity cost of mariner time	Mileage cost	Incidentals and meals cost	Lodging cost	Total annual cost per applicant	Total annual cost all applicants
Unit Cost	[1] $22/hour	[2] $0.36/mile	[3] $50/day	[3] $120/day	NA	NA
REC Time	22	.....	.....	.....	$22	$311,630
One-Day Round-Trip Travel	88	36	50	.....	174	1,725,297
Overnight Round-Trip Travel	176	72	100	120	468	1,988,766
Total Annual Cost of the Final Rule	.....	.....	.....	.....	.....	4,025,693

[1] Per hour.
[2] Per mile.
[3] Per day.

The present value (PV) of the total cost of this interim rule is $18 million in 2003 dollars (2003–2007, 7 percent discount rate).

The primary cost of this rule is the travel cost, which is driven by the mariners' opportunity cost of time, lodging, and other per diem factors. However, we believe the total cost of this rule is conservative because the REC locations, together, can serve more than 70 percent of affected mariners—especially given that the RECs are located in or near major maritime ports that may be accessed by mariners.

Benefits

The Coast Guard will review a mariner's background before issuing an MMD and anticipates several qualitative benefits from this new process. The Coast Guard will require mariners, seeking MMDs, to validate their basic information on identity and criminal records to ensure the issuance of MMDs only to eligible mariners. The Coast Guard expects to ensure marine safety and protect national security by conducting a background check of all MMD applicants and identifying those who pose a threat.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act.

Collection of Information

This interim rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on state or local governments and would either preempt state law or impose a substantial direct cost of compliance on them.

We have analyzed this interim rule under that Order and have determined that it does not have implications for federalism. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the states. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) Since this rule involves the manning of U.S. vessels and the documentation of merchant mariners, it is a matter of personnel qualifications, and so precludes states from regulation. Because states may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one-year. Though this interim rule will not result in such an expenditure, we discuss its effects elsewhere in this preamble.

Taking of Private Property

This interim rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This interim rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this interim rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this interim rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this interim rule and concluded that under figure 2–1, paragraph (34)(c), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The rule will not result in any significant cumulative impact on the human environment; any substantial controversy or substantial change to existing environmental conditions; any impact, more than minimal, on properties protected under 4(f) of the DOT Act, as superseded by Public Law 97–449 and Section 106 of the National Historic Preservation Act; or any inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 12 as follows:

PART 12—CERTIFICATION OF SEAMEN

■ 1. Revise the authority citation for part 12 to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7303, 7304, 7305, 7503, 7505, 7701 and 8103; 50 U.S.C. 191; 33 CFR Part 6; 49 CFR 1.46; E.O. 10277, 16 FR 7537, 3 CFR, 1949–1953 Comp., p. 778; E.O. 10352, 17 FR 4607, 3 CFR 1949–1953 Comp., p. 873; E.O. 11249, 30 CFR 13001, 3 CFR, 1964–1965 Comp., p. 349; E.O. 13143, 64 FR 68271, 3 CFR, 1999 Comp., p. 238; E.O. 13273, 67 FR 56215, 3 CFR, 2002 Comp., p. 249; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 12.01–1, revise the heading and paragraph (a)(1); in paragraph (a)(2), remove the period and add, in its place, ''; and''; and add paragraphs (a)(3) and (c) to read as follows:

§ 12.01–1 Purpose of rules in this part.

(a) * * *

(1) A comprehensive and adequate means of determining and verifying the identity, citizenship, nationality, and professional qualifications an applicant must possess to be eligible for certification to serve on merchant vessels of the United States;

* * * * *

(3) A means, through a criminal record review and a safety and security check, to determine whether the holder of a merchant mariner's document would be a threat to the safety of life or property at sea, or his or her presence would be adverse to the security of the United States.

* * * * *

(c) Continuous discharge books and merchant mariner documents are issued by the Coast Guard and are property of the Coast Guard.

■ 3. In § 12.01–6, revise the definition for ''Conviction'' and add, in alphabetical order, the definitions for the terms ''Safe and Suitable Person'', and ''Safety and Security Check'' to read as follows:

§ 12.01–6 Definitions of terms used in this part.

* * * * *

Conviction means the applicant for a merchant mariner's document has been found guilty by judgment or plea by a court of record of the United States, the District of Columbia, any State, territory, or possession of the United States, a foreign country, or any military court, of a criminal felony or misdemeanor or of an offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304). If an applicant pleads guilty or no contest, is granted deferred adjudication, or is required by the court to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court's conviction, then the Coast Guard will consider the applicant to have received a conviction. A later expungement of the conviction will not negate a conviction unless the Coast Guard is satisfied that the expungement is based upon a showing that the court's earlier conviction was in error.

* * * * *

Safe and suitable person is one whose character and habits of life are such as to support the belief that his or her presence on board vessels of the United States is not, or may not be, adverse to the security of the United States.

Safety and Security Check is the process or action taken by the Coast Guard to determine whether an applicant for, or holder of, a merchant mariner's document is a safe and suitable person to be issued such a document or to be employed on a vessel under the authority of such a document.

* * * * *

■ 4. Revise § 12.01–7 to read as follows:

§ 12.01–7 Regional Examination Centers.

Applicants for licensing and certification may apply at the following locations:

Boston, MA
New York, NY
Baltimore, MD
Charleston, SC
Miami, FL
New Orleans, LA
Houston, TX
Memphis, TN
St. Louis, MO
Toledo, OH
San Pedro, CA
Alameda, CA
Portland, OR
Seattle, WA
Anchorage, AK
Juneau, AK
Honolulu, HI

■ 5. In § 12.02–4, revise the heading, paragraph (a), the introductory text of paragraph (c), and paragraph (c)(1), to read as follows:

§ 12.02–4 Basis for denial of a merchant mariner's document.

(a) No person who has been convicted by a court of record of a violation of the dangerous-drug laws of the United States, the District of Columbia, any State, territory, or possession of the United States, a foreign country, or any military court, is eligible for a merchant mariner's document, except as provided by paragraph (c) of this section. No person who has ever been the user of a dangerous drug, addicted or not, or has ever been convicted of an NDR offense described in section 205 of the National Driver Register Act of 1982, as amended (49 U.S.C. 30304) because of addiction to or abuse of alcohol is eligible for a merchant mariner's document, unless he or she furnishes satisfactory evidence of suitability for service in the merchant marine as provided in paragraph (e) of this section.

* * * * *

(c) *Criminal Record Review and Safety and Security Check.* The Coast Guard may conduct a criminal record review and conduct a safety and security check of an applicant for a merchant mariner's document. An applicant pursuing simultaneous transactions for merchant mariner's credentials shall undergo a single criminal record review and safety and security check. Each applicant must provide written disclosure of all prior convictions (as defined in § 12.01–6) at the time of application.

(1) When a criminal record review and a safety and security check are conducted, the applicant shall provide fingerprints in a form and manner specified by the Coast Guard.

(i) When a criminal record review or a safety and security check leads the Coast Guard to determine that an applicant is not a safe and suitable person (as defined in § 12.01–6) or cannot be entrusted with the duties and responsibilities of the merchant mariner's document for which application is made, the application may be disapproved.

(ii) If an application is disapproved, the applicant will be notified in writing of the fact, and, except as provided by this paragraph, the reason or reasons for, disapproval and advised that the appeal procedures in § 1.03 of this chapter apply. No examination will be given pending decision on appeal. The applicant will be notified in writing of the reason or reasons for disapproval, unless the Coast Guard determines that such disclosure of information is prohibited by law, regulation, or agency policy, in which case the reason(s) will not be disclosed.

* * * * *

■ 6. In § 12.02–5, in paragraph (b) remove the term ''CG–719'' and add, in its place, the term ''CG–719B''.

■ 7. In § 12.02–9, revise the first and second sentence of paragraph (a) and paragraphs (g) and (h) to read as follows:

§ 12.02–9 Application for documents.

(a) *General.* The Coast Guard will not process an incomplete merchant mariner's document application. It will process an application that is current and up-to-date with respect to service, physical examination, and other pertinent matters.

* * * * *

(g) Each applicant for a merchant mariner's document may be subject to a criminal record review and a safety and security check as described by § 12.02–4(c).

(h) Each applicant for a merchant mariner's document shall comply with the NDR requirements in § 12.02–4(d).

■ 8. Add § 12.02–12 to read as follows:

§ 12.02–12 Identity.

(a) Each person applying for a merchant mariner's document shall present acceptable proof of identity. Proof of identity shall consist of two current forms of identification, one of which shall contain a photo of the applicant. The Coast Guard may require other identification information reasonably necessary to prove the applicant's identity.

(b) The following credentials are acceptable proof of identity:

(1) Unexpired U.S. military identification card;

(2) Unexpired U.S. driver's license;

(3) Unexpired U.S. passport;

(4) Unexpired official identification card issued by a federal, State, or local government or by a territory or possession of the U.S. (including a federal employee's identification credential);

(5) Unexpired port credential, with photo of the applicant, issued by State or local port authority;

(6) Unexpired law enforcement credential, with photo of the applicant;

(7) Unexpired merchant mariner's document issued after February 3, 2003;

(8) Unexpired foreign passport; or

(9) Birth Certificate or Birth Registration, issued by a State, county, municipality or outlying possession of the U.S.

■ 9. In § 12.02–13, revise paragraphs (b) and (c) to read as follows:

§ 12.02–13 Citizenship requirements.

* * * * *

(b) The OCMI may reject any evidence of citizenship that is not believed to be authentic. Acceptable evidence of citizenship may be an original or a copy certified as true by the agency responsible for issuing the document of the following:

(1) Birth certificate or birth registration;

(2) Certificate of naturalization (original must be presented; photocopies are unlawful);

(3) Baptismal certificate or parish record recorded within one year after birth;

(4) Statement of a practicing physician certifying the physician's attendance at the birth and who possesses a record showing the date and location at which it occurred;

(5) State Department passport;

(6) A merchant mariner's document issued by the Coast Guard after February 3, 2003, that shows that the holder is a citizen of the U.S.;

(7) Delayed certificate of birth issued under a state seal in the absence of any collateral facts indicating fraud in its procurement; or

(8) Certificate of Citizenship issued by the United States Immigration and Naturalization Service or by the Bureau of Citizenship and Immigration Services;

(c) If the applicant can not meet the requirements set forth in paragraphs (b)(1) through (8) of this section, the applicant must make a statement to that effect, and may submit data of the following character for consideration:

(1) Report of the Census Bureau showing the earliest available record of age or birth.

(2) Affidavits of parents, other relative, or two or more responsible citizens of the U.S. stating citizenship.

(3) School records, immigration records, or insurance policies.

■ 10. In § 12.02–17, revise the heading and the introductory text of paragraph (c); revise paragraph (c)(2) and remove paragraph (c)(3); revise paragraph (d) and add paragraph (h) to read as follows:

§ 12.02–17 Preparation and issuance of documents.

* * * * *

(c) When a person applies for a merchant mariner's document, he or she must—

* * * * *

(2) Provide acceptable proof of identity as described in § 12.02–12.

(d) For recordkeeping purposes, the official identification number is a seaman's social security number.

* * * * *

(h) The mariner shall return the previous MMD when a new MMD is issued.

■ 11. Revise § 12.02–23(e) and add (g) to read as follows:

§ 12.02–23 Issuance of duplicate documents.

* * * * *

(e) If a merchant mariner's document or service record is lost, the seaman may obtain a duplicate by following the procedures in paragraph (c) of this section and by signing an affidavit, before the OCMI or a designated representative, explaining the loss of the document or service record. The Coast Guard will not process any application for a duplicate merchant mariner's document unless the applicant complies with the requirements of § 12.02–9.

* * * * *

(g) The Coast Guard may deny applications for duplicate merchant mariner's documents for any reason listed in § 12.02–4.

■ 12. Revise § 12.02–24 to read as follows:

§ 12.02–24 Reporting loss of continuous discharge book, merchant mariner's document, or certificate of discharge.

Whenever a mariner loses a continuous discharge book, merchant mariner's document, or certificate of discharge, the mariner shall immediately report the loss to the nearest OCMI. The report shall be made in writing giving the facts incident to its loss.

■ 13. In § 12.02–27, revise the introductory text of paragraph (a) and

paragraphs (a)(1), (a)(2), (a)(3), (e)(3)(i)(A), and (e)(3)(i)(B); redesignate paragraphs (e)(3)(i)(C) and (e)(3)(i)(D) as paragraphs (e)(3)(i)(D) and (e)(3)(i)(E), respectively; and add new paragraphs (e)(3)(i)(C) and (e)(5) to read as follows:

§ 12.02–27 Requirements for renewal of a merchant mariner's document.

(a) *General.* Except as provided in paragraph (g) of this section, an applicant for renewal of a merchant mariner's document shall establish possession of all of the necessary qualifications before the document is renewed. The Coast Guard will not process an application until the applicant has submitted a complete application package that complies with the requirements of § 12.02–9. A request for a renewed merchant mariner's document may be denied for any reason listed in § 12.02–4.

(1) Each application for a merchant mariner's document must be made on form CG–719B furnished by the Coast Guard and be accompanied by the evaluation fee (including examination and issuance fees when required) established in Table 12.02–18 of § 12.02–18. Each application must contain all necessary proofs of qualifications, identity, and citizenship or nationality. It must be current and up-to-date with respect to service, the physical examination, and all other pertinent matters.

(2) The applicant may apply either in person at any Regional Examination Center listed in § 12.01–7(a) or by mail under paragraph (e)(3) of this section.

(3) Each applicant who elects to renew by mail shall submit the merchant mariner's document with his or her application. If a document is submitted, it will not be returned to the applicant. A photocopy of a merchant mariner's document showing both the front and the back of the document may be submitted in place of the existing document.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) A completed application and the evaluation fee (including examination and issuance fees when required) established in Table 12.02–18 in § 12.02–18.

(B) The document to be renewed, or, if it has not expired, a photocopy of it, showing both the front and the back.

(C) A copy (both front and back if the credentials are printed on two sides) of two credentials deemed acceptable proofs of identity in § 12.02–12, one of which must be a photo identification.

* * * * *

(5) Each applicant applying for renewal by mail must appear in person at an REC at least one time during the application process to obtain a renewed merchant mariner's document. At that time, the applicant must show the same proofs of identity submitted with the application package as required by paragraph (e)(3)(i)(C) of this section. No other proofs of identity will be accepted. At the time the applicant appears in person at the REC, the applicant shall provide fingerprints in a form and manner specified by the Coast Guard. The applicant shall return the expired or expiring document to the Coast Guard. If the applicant has applied in person, shown the proofs of identity, submitted the expired or expiring document with the application, and provided fingerprints, then the renewed document may be mailed to an address provided by the applicant. * * *

Dated: December 29, 2003.

Thomas H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–32318 Filed 12–31–03; 12:19 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[USCG–2002–11288]

RIN 2115–AG30

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Correction to interim rule.

SUMMARY: This document contains corrections to the interim rule [USCG–2002–11288], which was published in the **Federal Register** on December 12, 2003 (68 FR 69564). The interim rule provides a partial rate adjustment for pilotage on the Great Lakes. A review of this interim rule after publication identified an omission of a figure in a table and two erroneous tables.

DATES: Effective on January 6, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on this correction notice, call or e-mail Paul Wasserman, Director, Office of Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at telephone 202–267–2856, or *pwasserman@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Need for Correction

The interim rule, as published, contained an erroneous figure for the total of District One's Projected Return on Investment. This was due to the omission of a number in the column designated as ''Total District One.'' There were also two incorrect tables placed in Step 6a. The tables should have been ''Table B.—District Two—Projected Return on Investment'' and Table C.—District Three—Projected Return on Investment.''

Correction of Publication

■ Accordingly, the publication on December 12, 2003, of the interim rule [USCG–2002–11288], FR Doc. 03–30711, is corrected as follows:

■ 1. On page 69574, in Table A.—District One Step 10, change the figure under Total District One from $10,000 to $100,000.

■ 2. On page 69574, remove ''Table B.—District Two—Adjustment Determination'' and ''Table C.—District Three—Adjustment Determination'' and, in their place, add the following tables.

TABLE B.—DISTRICT TWO—PROJECTED RETURN ON INVESTMENT

Step	Area 4	Area 5	Total District 2
1	$705,015	$1,461,069	$2,166,084
2	(365,292)	(446,468)	(811,760)
3	(477,218)	(930,701)	(1,407,919)
4	(137,495)	83,900	(53,595)
5	0	0	0
6	(137,495)	83,900	(53,595)
7	0	0	0

TABLE B.—DISTRICT TWO—PROJECTED RETURN ON INVESTMENT—Continued

Step	Area 4	Area 5	Total District 2
8	(137,495)	83,900	(53,595)
9	(137,495)	83,900	(53,595)
10	89,734	140,353	230,087
11	(1.593)	0.559	(0.280)

TABLE C.—DISTRICT THREE—PROJECTED RETURN ON INVESTMENT

Step	Area 6	Area 7	Area 8	Total District 1
1	$1,540,306	$1,119,819	$1,030,693	$3,690,818
2	(739,550)	(292,739)	(508,441)	(1,540,730)
3	(1,099,676)	(625,315)	(715,827)	(2,440,818)
4	(298,920)	201,765	(193,575)	(290,730)
5	0	0	0	0
6	(298,920)	201,765	(193,575)	(290,730)
7	0	0	0	0
8	(298,920)	201,765	(193,575)	(290,730)
9	(298,920)	201,765	(193,575)	(290,730)
10	111,668	83,752	83,752	279,172
11	(2.677)	2.409	(2.311)	(1.041)

Dated: December 30, 2003.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 04–226 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 02–239; RM–10529; RM–10711]

Radio Broadcasting Services; Alpine and Presidio, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 67 FR 57779 (September 12, 2001), this *Report and Order* grants the proposal to allot Channel 292C1 to Presidio, Texas, and denies the mutually exclusive proposal to allot Channel 293C at Alpine, Texas. Pursuant to the Commission's FM allotment priorities, the proposal to provide a first local aural transmission service to Presidio [FM allotment priority (3)] prevails over a proposal to add a fourth local aural transmission service to Alpine [FM allotment priority (4)]. The coordinates for Channel 292C1 at Presidio, Texas, are 29–25–54 North Latitude and 104–09–55 West Longitude, with a site restriction of 24.6 kilometers (15.3 miles) southeast of Presidio, Texas.

DATES: Effective February 6, 2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–239, adopted December 18, 2003, and released December 23, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893; facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1.The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Presidio, Channel 292C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 04–106 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–4036; MB Docket No. 02–114; RM–10426]

Radio Broadcasting Services; Carrollton, Gurley, Meridianville, and Tuscumbia, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking*, 67 FR 40907 (June 14, 2002), this document grants a petition for rulemaking filed jointly by Capstar TX Limited Partnership, licensee of Station WXQW(FM), Meridianville, Alabama, and Clear Channel Broadcasting Licenses, Inc., licensee of Stations WLAY–FM, Tuscumbia, Alabama, and WZBQ, Carrollton, Alabama. Channel 231A is reallotted from Meridianville, Alabama to Gurley, Alabama and the license of Station WXQX(FM) is modified to reflect the change of community. Channel 262C2 is substituted for Channel 262C1 at Tuscumbia, Alabama, and Channel 262C2 is reallotted from Tuscumbia to Meridianville, Alabama, and the license of Station WLAY–FM is modified to reflect the change of

community. Last, Station WZBQ(FM), Carrollton, Alabama, is downgraded from Channel 231C to Channel 231C0 to accommodate the modification at Gurley and its license is modified accordingly. Channel 231A is allotted at Gurley at a site 12.8 kilometers (8.0 miles) northwest of the community at coordinates 34–44–29 NL and 86–30–26 NL. Channel 262C2 is allotted at Meridianville at a site 15.6 kilometers (9.7 miles) west of the community at coordinates 34–49–06 NL and 86–44–16 WL. Channel 231C0 is allotted at Carrollton at Station WZBQ's licensed site at coordinates 33–13–6 NL and 88–5–46 WL. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–114, adopted December 18, 2003, and released December 23, 2003. The reallotment from Tuscumbia to Meridianville is conditioned on the reallotment of Station WWWQ(FM), Channel 263C, Anniston, Alabama to College Park, Georgia that was granted in MM Docket No. 98–112 and is effective but not final. No construction is to commence for any of the changes approved in this *Order* until finality has occurred in MM Docket 98–112. Operating authority for Station WLAY–FM, Channel 262C2 at Meridianville may not be granted until operations have commenced by Station WWWQ(FM), Channel 263C at College Park, Georgia.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 231C and adding Channel 231C0 at Carrollton, by adding Gurley, Channel 231A, by adding Channel 262C2 at Meridianville and by removing Channel 262C1 at Tuscumbia.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–107 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3924; MB Docket No. 03–69; RM–10664]

Radio Broadcasting Services; Carrizozo, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Douglas Bennett, allots Channel 261C2 at Carrizozo, New Mexico, as the community's first local FM service. Channel 261C2 can be allotted to Carrizozo, New Mexico, in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.9 km (13 miles) southeast of Carrizozo. The coordinates for Channel 261C2 at Carrizozo, New Mexico, are 33–28–30 North Latitude and 105–46–18 West Longitude. The Mexican government has concurred in this allotment. A filing window for Channel 261C2 at Carrizozo, New Mexico, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–69, adopted December 12, 2003, and released December 16, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Carrizozo, Channel 261C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–110 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3917; MB Docket No. 02–121; RM–10443]

Radio Broadcasting Services; Hartington, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Pierce Radio L.L.C., allots Channel 232C2 at Hartington, Nebraska, as the community's first local FM service. Channel 232C2 can be allotted to Hartington, Nebraska, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 km (7.4 miles) west of Hartington. The coordinates for Channel 232C2 at Hartington, Nebraska, are 42–39–40 North Latitude and 97–23–58 West Longitude. A filing window for Channel 232C2 at Hartington, Nebraska, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–121, adopted December 12, 2003, and released December 16, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Hartington, Channel 232C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–111 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3916; MB Docket No. 02–166; RM–10478]

Radio Broadcasting Services; Salina, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Sierra Grande Broadcasting this document allots Channel 233C to Salina, Utah. *See* 67 FR 47502, published July 19, 2002. The reference coordinates for the Channel 233C allotment at Salina, Utah, are 38–52–24 and 111–51–33. With this action, the proceeding is terminated.

DATES: Effective January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's R*eport and Order* in MB Docket No. 02–166, adopted December 12, 2003, and released December 16, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals 11, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Salina, Channel 279A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–112 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3918; MB Docket No. 02–128; RM–10450]

Radio Broadcasting Services; Centerville, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of David P. Garland, allots Channel 274A at Centerville, Texas, as the community's third local FM service. *See* 67 FR 78,402, December 24, 2002. The Order also dismisses the counterproposal of Sonoma Media Corporation, at the request of Sonoma Media Corporation. Channel 274A can be allotted to Centerville, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 km (3.3 miles) west of Centerville. The coordinates for Channel 274A at Centerville, Texas, are 31–14–49 North Latitude and 95–55–23 West Longitude. A filing window for Channel 274A at Centerville, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–128, adopted December 12, 2003, and released December 16, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 274A at Centerville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–113 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3922]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Applications*, 8 FCC Rcd 4735 (1993).

DATES: Effective January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted December 12, 2003, and released December 16, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 255C1 and by adding Channel 255C2 at Leupp.

■ 3. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 298A and by adding Channel 298C0 at Sun Valley.

■ 4. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 256C and by adding Channel 256C0 at New Iberia and by removing Channel 258C and by adding Channel 258C0 at New Orleans.

■ 5. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 242C and by adding Channel 242C0 at Jackson and by removing Channel 262C and by adding Channel 262C0 at Laurel.

■ 6. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 246C and by adding Channel 246C0 at Greensboro.

■ 7. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 248C3 and by adding Channel 249C2 at Trenton.[1]

■ 8. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 286C and by adding Channel 285C0 at Tremonton.

■ 9. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 285A and by adding Channel 285C2 at Cheyenne.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–118 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

[1] Channel 249C3 was substituted for Channel 248C3 at Trenton, Tennessee, in Docket 99–196. *See* 67 FR 52877, August 14, 2002.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–01–9832; Amdt. 195–80]

RIN 2137–AD59

Pipeline Safety: Hazardous Liquid Pipeline Operator Annual Reports

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action requires operators of pipeline systems subject to RSPA's hazardous liquid pipeline safety regulations to prepare and file annual reports containing information about these systems. This data will provide the basis for more efficient and meaningful analyses of the safety status of hazardous liquid pipelines. RSPA's Office of Pipeline Safety (RSPA/OPS) will use the information to compile a national pipeline inventory, identify and determine the scope of safety problems, and target inspections.

DATES: This final rule is effective on February 5, 2004.

FOR FURTHER INFORMATION CONTACT: Shauna Turnbull by phone at (202) 366–3731, by e-mail at *shauna.turnbull@rspa.dot.gov,* or by mail at the U.S. Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety, Room 2103, 400 7th St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Federal pipeline safety regulations at 49 CFR part 195 apply to more than 160,000 miles of hazardous liquid and carbon dioxide pipelines. RSPA/OPS shares responsibility for inspecting and overseeing the safety of these pipelines with many State pipeline safety offices.

RSPA/OPS uses pipeline accident data to identify safety issues and target risk-based inspections. The data are from accident reports that operators submit on Form F7000–1, *Accident Report—Hazardous Liquid Pipelines* (§§ 195.50 and 195.54).

In recent years, Congress, the National Transportation Safety Board (NTSB), and DOT's Office of the Inspector General (OIG) have urged RSPA/OPS to improve the quality of its accident data and data analyses. In response, RSPA/OPS reduced the volumetric threshold for accident reporting from 5 barrels to as little as 5 gallons of product released during an accident (67 FR 831; January 8, 2002). However, RSPA/OPS still lacks the information necessary to improve accident analyses.

To obtain this information, RSPA/OPS published a notice of proposed rulemaking (NPRM) that would require operators to submit an annual report of pipeline inventory and other information about their pipeline systems (67 FR 48844; July 26, 2002). This information would provide a foundation for more efficient and meaningful analyses of accident data. For example, to help determine the effect of system improvements and other safety practices, RSPA/OPS would use information from annual reports to calculate leaks by cause on a per mile basis. The information could also be used for trending accident data, assessing risk, prioritizing safety

inspections, determining appropriate remedial actions, comparing individual operator performance with industry performance, assessing costs and benefits of safety regulations, monitoring industry performance and regulatory compliance, and allocating RSPA/OPS resources.

RSPA/OPS already collects similar annual report information for gas transmission and gathering systems (RSPA F 7100–2.1, *Natural Gas Transmission Pipeline Operator Annual Report;* revised August 8, 2001). This information is currently used by RSPA/OPS, State pipeline safety programs, State governors, congressional committees, metropolitan planners, pipeline research engineers, industry safety experts, the media, and the public. Similarly, a hazardous liquid pipeline annual report would provide these stakeholders with information they need to manage the safety of hazardous liquid pipelines.

In response to a petition from the American Petroleum Institute (API) and the Association of Oil Pipelines (AOPL), RSPA/OPS extended the period for public comment on the NPRM until November 22, 2002 (67 FR 59045; September 19, 2002). Based on written comments on the NPRM, RSPA revised the proposed annual report form and sought advice from the statutorily mandated hazardous liquid pipeline advisory committee—the Technical Hazardous Liquid Pipeline Safety Advisory Committee—at its March 25, 2003, meeting (*see* Docket No. RSPA–01–9832 for meeting minutes). RSPA/OPS then published the revised report form for further public comment (68 FR 28884; May 27, 2003).

Comments

RSPA/OPS received comments on the proposed rule from API, Enbridge Energy Company, Inc. (Enbridge), and Marathon Pipe Line, LLC (Marathon). API, Enbridge, and BP Pipelines North America also commented on the revised annual report form. This section of the preamble summarizes the comments and explains how we considered them in this final rule.

State-by-State reporting. Both Enbridge and API commented on alleged difficulties that could result from the proposal to collect hazardous liquid pipeline information on a State-by-State basis. RSPA/OPS recognizes that the hazardous liquid pipeline industry has not had business reasons for maintaining the requested data by State. And, because pipeline companies now report mileage of the hazardous liquid pipelines to the National Pipeline Mapping System (NPMS), RSPA/OPS already has the data to determine operator mileage by State. RSPA/OPS is examining how future enhancements to the NPMS might enable us to efficiently obtain additional State-by-State information without imposing additional data collection requirements on hazardous liquid pipeline operators.

Enbridge urged RSPA/OPS to collect only mileage information by State and to collect all other data by pipeline system. It noted that volume, capacity, construction, and integrity assessment data is now maintained only for pipeline systems, and that reporting this information by State would require extensive manual sorting of data. Enbridge alleged that such data would be challenging for RSPA/OPS to validate, decipher, and analyze. For example, Enbridge noted that State-by-State data could not be used to trend commodity-specific information or integrity assessment data by line size or decade of construction. Moreover, for pipelines crossing two or more States, the same volumes would appear on the reports for upstream and downstream States, greatly complicating any cumulative volume analysis.

API had similar concerns, alleging that the proposed annual report form would result in poor quality national data and an inability to analyze or understand the national pipeline system. As an example, it noted that if operators were to report only aggregate data for all pipelines operated in a State, RSPA/OPS could not discern differences in corrosion rates based on commodities transported. API also noted that the part 195 integrity management rules require operators to integrate a wide range of risk-related information on particular pipelines. It sees no need to maintain this information by State. API suggested that RSPA/OPS develop a form similar to the one used in the industry's Pipeline Performance Tracking System (PPTS) that would focus on data about each operator's system rather than on data aggregated by State. Separate entries could provide interstate and intrastate mileage in each State. API alleged that this approach would reduce erroneous data and the reporting burden and give RSPA/OPS a good understanding of nationwide performance. In addition, API suggested the approach should satisfy the needs of individual States because each State's leaks per mile—determined from the mileage data and the operators' accident reports—could be compared to the national leak rate.

RSPA response. In this final rule RSPA/OPS has simplified the form by dropping the State-by-State requirement and separating the decade-installed information into a separate category, similar to that requested for gas transmission lines on *the Gas Transmission Operator Annual Report* form. These changes reduce the complexity of the form and the reporting burden.

As stated above, RSPA/OPS is considering how State-by-State information might be obtained through the NPMS or by other methods. RSPA/OPS believes it is important to have State-by-State information for various purposes, including meeting the informational needs of the State pipeline safety programs and other interested stakeholders, and for a variety of trending purposes, such as examining State population increase and encroachment impacts on pipelines.

Historical integrity assessment. Enbridge alleged that requiring operators to report annually the percentage of pipeline integrity assessments (hydrostatic testing and internal inspection) done in the decade before the reporting year would not yield meaningful data. It explained that as total system mileage changes (through purchases, sales, abandonments, or conversions), the reported percentages would also change, leading to invalid data and conclusions. API observed that the proposed internal inspection information would not be useful as a baseline for comparison with inspections in future years under the integrity management requirements because operators would have to estimate much of the data. Enbridge suggested that we limit assessment information to the number of miles assessed during the reporting year and that we use a different approach, such as an industry survey, to collect historical assessment information. API thought the percentage assessed question could result in a percentage larger than the nationwide pipeline mileage because some systems may be pigged several times in a 10-year period, some with deformation tools only, and others with both metal loss tools and deformation tools. Both Enbridge and API said internal inspection results be reported by type of defect rather than by the technology of the inspection tool.

RSPA response. RSPA/OPS agrees that the collection of historical integrity assessment information should be closely aligned with RSPA/OPS' Integrity Management Program. In response to comments, RSPA/OPS published a revised form on May 27, 2003, to reflect this approach. RSPA/OPS will obtain historical information through the Integrity Management inspections. The final form adopted herewith requests more detailed

information about integrity assessments done during each calendar year.

Gathering lines. Enbridge argued that the annual report requirement should not apply to gathering lines, particularly gathering lines that RSPA/OPS does not regulate. It reasoned that the information collected would be incomplete because the requirement would not apply to all operators of gathering lines, just those who operate pipelines regulated by part 195. API added that because the vast majority of gathering lines not regulated by part 195 are operated by companies that do not operate part 195 regulated pipelines, the proposed annual report would not disclose the nation's total gathering line mileage.

RSPA response. In the final annual report form, RSPA/OPS has eliminated the information on gathering pipeline mileage not subject to part 195, but will require information on gathering lines that are subject to part 195.

Anhydrous ammonia. API commented that anhydrous ammonia pipeline data should not be combined with carbon dioxide pipeline data for the purposes of analysis. It suggested that anhydrous ammonia be included with highly volatile liquids (HVL) because the physical properties are similar.

RSPA response. RSPA/OPS concurs. The final annual report form includes anhydrous ammonia with HVLs.

Pre-1940 pipe. API commented that lumping all pre-1940 pipe into a single category could diminish the understanding of technological differences between 1920s and 1930s pipe. It called the differences major, and was concerned that whole decades of pipe might be unwittingly condemned.

RSPA response. RSPA/OPS concurs. The final annual report form requires reporting by decade of installation beginning with pre-1920s and for each decade thereafter.

Cost of compliance. API disputed RSPA/OPS' estimate of the cost of compliance with the proposed annual report requirement, calling it grossly underestimated. It said most data is not readily available electronically, is not subdivided or identified in operator records by State, and would require extensive hands-on research and correlation. Further, API said the assumed hourly rate ($40/hour) is unrealistically low, since the identification, coordination and oversight of data collection, interpretation, and management would be conducted by experienced engineering personnel at two to three times this rate.

RSPA response. The final Regulatory Evaluation (included herein) takes this comment into account in estimating industry costs.

Further notice and response time. API urged RSPA/OPS to publish another notice for public comment based on comments to the NPRM before adopting a final annual report form. It also said operators would not be able to respond to the NPRM's proposed data collection in the 60–90 days suggested in the NPRM.

RSPA response. As stated above, following the close of the extended comment period on the NPRM, RSPA posted a revised form in the docket and invited further public comment (68 FR 28884; May 27, 2003). API and Enbridge submitted additional comments on details, organization, and design of the form that helped to clarify entries, correct errors, and provide consistency. The final report form reflects these additional comments. The final annual report form substantially addresses all objections to the proposed form. Recognizing that industry will need some time to gather the requested information, RSPA/OPS is delaying the filing of the initial hazardous liquid pipeline annual report form until June 15, 2005. This initial report would be for calendar year 2004. Recognizing that many operators are prepared for early submission because of industry's need for having an earlier submission for a variety of purposes, including measuring national progress of meeting new integrity management requirements, RSPA/OPS will accept voluntary submissions at an operator's discretion at any time.

User fees. Marathon questioned how the proposed annual report data would relate to the annual user fee assessments.

RSPA response. RSPA/OPS will use information from the new hazardous liquid pipeline annual report to calculate annual user fee assessments. This is similar to the procedure used for calculating the gas transmission pipeline user fees based on information in the gas transmission pipeline annual reports.

Reporting Details

In compliance with the new § 195.49, each operator must submit by March 15 of each year an annual report on Form RSPA F7000.1–1 for each of the following types of pipeline systems operated at the end of the previous year: crude oil, highly volatile liquid (including anhydrous ammonia), petroleum products, and carbon dioxide. System type is determined by the commodity the system transported in largest volume. For example, if a pipeline system transports only crude oil, it would be a crude oil type system. If a pipeline system transports batches of crude oil and petroleum products, it would be either a crude oil or petroleum product type system, depending on which commodity is transported in larger volume.

The annual report form asks whether the report is for crude oil, highly volatile liquid (including anhydrous ammonia), petroleum products, or carbon dioxide type systems and the volumes of these commodities transported by the system. The form also asks for pipeline mileage, cathodically protected versus unprotected, coated versus bare steel, steel pipeline by decade and diameter, electric resistance welded (ERW) pipeline by decade and weld type, miles of regulated gathering lines, and information on breakout tanks and integrity assessment.

The first annual report form is due March 15, 2005, and includes data for calendar year 2004 for systems operated at the end of 2004. Operators can submit the form in hard copy to the RSPA/OPS Information Resources Manager, at the same address for filing hazardous liquid accident reports: Information Resources Manager, Office of Pipeline Safety, Room 2301, 400 7th St., SW., Washington, DC 20590.

Alternatively, reports may be submitted electronically via the RSPA/OPS Online Data Entry System, a Web-based reporting system accessible at *http://ops.dot.gov.* Electronic submission will be available by the end of 2004. RSPA/OPS is examining how much of the information requested on the annual report form may, in the future, be submitted via the National Pipeline Mapping System.

The final annual report form and instructions for completing the form are published with this Final Rule. Blank forms and instructions may also be obtained at *http://ops.dot.gov* under the Forms section of Online Library, or from the Information Resources Manager at the address provided above.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

RSPA does not consider this rulemaking to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). RSPA also does not consider this rulemaking to be significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). Below is a summary of the

regulatory evaluation which can be found in the public docket for this final rule.

Regulatory Evaluation

Two comments were received on the cost/benefit analysis of the proposed rule from a major hazardous liquid operator and a trade association representing hazardous liquid operators. They criticized the cost-benefit analysis for underestimating the costs of the proposed rule. Specifically the trade association stated that the $40 per hour labor cost used is too low. RSPA concurs that we may have underestimated the fully loaded labor cost for hazardous liquid pipeline personnel. Therefore, RSPA is doubling the per hour labor cost for hazardous liquid pipeline personnel to $80 per hour.

RSPA was also criticized for underestimating the time to perform the necessary paperwork. RSPA concurs in part. RSPA believes that the most burdensome of the proposals was the requirement for collection of the data by state. This provision is being removed from the final rule. Additionally, RSPA is removing the provision for the collection of data on integrity management as well. RSPA was also criticized for proposing the collection of data on currently unregulated gathering lines. RSPA agrees with these comments and is removing these requirements in the final rule. Additional changes were made in regards to collection of cathodic protection and pipe diameter information, as discussed in the preamble.

Even with these changes, RSPA's time estimates for preparing hazardous liquid pipeline annual reports need to be adjusted. RSPA is doubling the estimated time for completion of an annual report from that used in the proposed rule. We now estimate each operator will need, on average, 24 hours to complete the annual report in the first year and 12 hours in each subsequent year.

Benefits

The hazardous liquid pipeline system inventory information is needed for: meaningful trending of hazardous liquid pipeline accident safety data; risk assessment; recommendations regarding rehabilitation or replacement of pipeline segments; analysis of costs and benefits; and comparison of individual operator performance against industry performance. This safety information will be used by RSPA/OPS for assessment of pipeline risks, regulatory development, and programmatic resource allocation. RSPA/OPS also uses the information in monitoring industry performance and regulatory compliance, and for planning standard safety inspections of operators. States, local community planners, and emergency responders will benefit from access to information about hazardous liquid pipeline systems. Industry will benefit when RSPA/OPS establishes a baseline measurement for pipeline company safety performance using the collected data.

Costs

The form asks for information that should be readily available to the operator on their own databases. RSPA expects that the time required to complete the form will decrease as operators adjust their computerized systems to track the requested information. RSPA estimates it will take an operator 24 hours to complete the form the first year and half as long (12 hours annually) in subsequent years.

Based on an analysis of operators who pay user fees, there are 208 regulated operators of hazardous liquid pipelines in the U.S.

RSPA previously estimated the hourly cost of the person completing the form at $40. This was based on the U.S. Department of Labor's National Occupational Employment and Wage Earnings data for 1999. According to that data, the hourly wage for a Transportation, Storage, and Distribution Manager (the closest category to a pipeline manager) was $26.03 per hour. The $26.03 figure was multiplied by 1.35 to account for fringe benefits ($26.03 × 1.35 = $35.14). RSPA added an inflation factor of 14% to account for inflation from 1999 to 2002 ($35.14 × 1.14 = $40.05). However, based on comments from industry trade associations, RSPA is revising its estimate to $80 per hour.

RSPA estimates that it will take an operator about 24 hours to complete the form the first year. Based on an average cost of $80 per hour, the cost to industry of completing the form for the first year will be approximately $400,000 (208 forms × 24 hours × $80 per hour = $399,360). Total hours expended by industry to complete the form in the first year will be approximately 5,000 hours (208 forms × 24 hours = 4,992 hours).

After the first year, adjustments to company databases and computer systems will likely reduce the annual industry cost to approximately $200,000 (208 × 12 × $80 = $199,680). After the first year, total hours expended by industry to complete the form will be approximately 2,500 hours (208 forms × 12 hours = 2,496 hours).

Conclusion

RSPA believes that the initial annual cost of $400,000 and ongoing annual cost of $200,000 is a modest burden on the hazardous liquid pipeline industry. The benefits accruing to RSPA and the pipeline industry through the increased utility of the hazardous liquid accident data should easily outweigh this modest cost. The additional information will allow RSPA/OPS and the hazardous liquid pipeline industry to identify safety issues and trends, and allow operators to make changes to procedures and practices that will ultimately reduce pipeline accidents and improve pipeline safety.

Regulatory Flexibility Act

The final rule's first year industry cost of $400,000, divided by the 208 hazardous liquid pipeline operators, results in an average cost of $2,000 per operator. Subsequent annual cost to complete the form is approximately $1,000 per operator ($200,000 divided by 208 operators).

The Small Business Administration (SBA) criteria for defining a small entity in the hazardous liquid pipeline industry is 1,500 employees, as specified in the North American Industry Classification System (NAICS) codes. The NAICS codes relevant to hazardous liquid pipelines are code 486110—Pipeline Transportation of Crude Oil and code 486910—Pipeline Transportation of Refined Petroleum Products. RSPA does not collect information on number of employees or revenues for pipeline operators. Such a collection would require OMB approval. RSPA nevertheless continues to seek information about the number of small pipeline operators from which to more fully determine impact on small entities, *i.e.* companies with less than 1,500 employees, including employees of parent corporations.

RSPA has reviewed the data it collects from the hazardous liquid pipeline industry and has estimated there are probably 10–20 small entities in this industry. Several of the operators do not transport petroleum products, but rather transport carbon dioxide, ammonia, or chlorine and may not be indirect competition with large pipeline operators. Other small operators remain competitive as they have developed niche markets and may supply only a small number of customers.

In the proposed rule on Hazardous Liquid Pipeline Accident Reporting Revisions (66 FR 15681; March 20, 2001), RSPA/OPS sought input from the public on the impact of the proposed annual report on small entities. We

received no responses to this request for comments from small entities. However, the SBA Chief Counsel for Advocacy provided comments on behalf of small businesses. SBA asked how many hazardous liquid pipeline operators RSPA/OPS would characterize as small operators. We believe the answer is between 10 and 20, as noted above. And, we believe the impact of this rule will be proportionate to the size of the company. Smaller companies tend to have less pipeline mileage and will likely have to collect less information at a lower cost. This rule will cost an average company less than $2,000 the first year and $1,000 per year thereafter. RSPA believes this will be even less for small operators.

If you are an operator of a small pipeline company, RSPA/OPS requests that you identify yourself to help us more accurately determine impact on small businesses in this and future rulemakings (*see* the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections above for how to provide comments).

Based on the small cost to companies of any size and to the industry at large, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Below is a summary of the Paperwork Reduction Analysis. A complete copy is available for copy and review in the public docket for this final rule.

This final rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the DOT has submitted a copy of the Paperwork Reduction Act Analysis to the Office of Management and Budget (OMB) for its review. The name of the information collection is *Transportation of Hazardous Liquids by Pipeline Recordkeeping and Annual Reporting*. The purpose of this information collection is to improve the current hazardous liquid pipeline accident information collection.

Number of Respondents: 208.

Frequency of Responses: 1.

Annual Burden: 24 hours the first year and 12 hours per year thereafter for each company.

Type of Respondent: Hazardous liquid pipeline operators.

Total Annual Burden: 4,992 hours the first year and 2,496 per year thereafter.

Comments on the paperwork reduction analysis are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility: (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond including the use of the appropriate automated, electronic, mechanical, or other technological collection techniques. Send comments within 30 days of the publication of this notice directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer, Department of Transportation, 715 Jackson Place, NW., Washington, DC. Please be sure to include the docket number in your comments.

Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. Because this final rule would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, *Federalism*. The final rule does adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Unfunded Mandates

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have concluded that this action would not significantly affect the quality of the environment. Because the final rule parallels present reporting requirements and practices for gas pipeline operators and collection of information does not result in an environmental impact.

Executive Order 13211

RSPA has determined that this rule does not constitute a significant energy action within the meaning of Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. This rule will not result in adverse effects on energy supply, distribution, or use.

Executive Order 13212

Because this rule is not an energy-related project, Executive Order 13212, *Actions to Expedite Energy-Related Projects*, does not apply.

Executive Order 12630

This rule does not affect or potentially affect the use or value of real, personal, or intellectual property. Therefore, Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*, does not apply to this rule.

List of Subjects in 49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, RSPA amends 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 2. The title of Subpart B is revised to read as follows:

Subpart B—Annual, Accident, and Safety-Related Condition Reporting

■ 3. Section 195.49 is added to Subpart B to read as follows:

§ 195.49 Annual report.

Beginning no later than June 15, 2005, each operator must annually complete and submit DOT form RSPA F 7000–1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. A separate report is

required for crude oil, HVL (including anhydrous ammonia), petroleum products, and carbon dioxide pipelines. Operators are encouraged, but not required, to file an annual report by June 15, 2004, for calendar year 2003.

Issued in Washington, DC on December 22, 2003.

Samuel G. Bonasso,

Deputy Administrator.

Note: The following forms and instructions will not appear in the Code of Federal Regulations.

BILLING CODE 4910–60–P

Notice: This report is required by 49 CFR Part 195. Failure to report may result in a civil penalty not to exceed $100,000 for each violation for each day the violation continues up to a maximum of $1,000,000 as provided in 49 USC 60122.

Form Approved
OMB No. 2137-0522

U.S. Department of Transportation
Research and Special Programs Administration

ANNUAL REPORT FOR CALENDAR YEAR 20___
HAZARDOUS LIQUID OR CARBON DIOXIDE SYSTEMS

INITIAL REPORT ☐
SUPPLEMENTAL REPORT ☐

Important: Please read the separate instructions for completeing this form before you begin.

System Type: 1. Crude Oil ☐ 2. HVLs ☐ 3. Petroleum & Refined Products ☐ 4. CO_2/N_2O or other ☐

PART A - *OPERATOR INFORMATION

1. NAME OF COMPANY OR ESTABLISHMENT

IF SUBSIDIARY, NAME OF PARENT

2. LOCATION OF OFFICE WHERE ADDITIONAL INFORMATION MAY BE OBTAINED

Number & Street

City & County

State & Zip Code

DOT USE ONLY

3. OPERATOR'S 5 DIGIT IDENTIFICATION NUMBER

(If Required) / / / / / /

The operator is the **person (as defined in 49CFR 195.2) who exercises substantial control over the operation of the pipeline.*

4. HEADQUARTERS NAME & ADDRESS, IF DIFFERENT

Number & Street

City & County

State & Zip Code

PART B – MILES OF STEEL PIPE BY LOCATION PROTECTION

	Cathodic protected		Cathodic unprotected	
	Bare	Coated	Bare	Coated
Onshore				
Offshore				
Total Miles of Pipe				

Total Miles That Could Affect HCAs	
Onshore	
Offshore	
Total Miles	

PART C – MILES OF STEEL PIPE BY NOMINAL PIPE SIZE (NPS) BY LOCATION

Onshore	NPS 4" or less	6"	8"	10"	12"	14"	16"	18"	20"
	22"	24"	26"	28"	30"	32"	34"	36"	over 36"
Offshore	NPS 4" or less	6"	8"	10"	12"	14"	16"	18"	20"
	22"	24"	26"	28"	30"	32"	34"	36"	over 36"

PART D – MILES OF PIPE BY DECADE INSTALLED

Pre-20 or Unknown	1920 - 1929	1930 - 1939	1940 - 1949	1950 – 1959	1960 – 1969	1970 – 1979	1980 – 1989	1990 - 1999	2000 - 2009	Total

PART E. MILES OF ELECTRONIC RESISTENCE WELD (ERW) PIPE BY WELD TYPE AND DECADE

Decade Pipe Installed	Pre-40 or Unknown	1940 - 1949	1950 - 1959	1960 - 1969	1970 - 1979	1980 - 1989	1990 - 1999	2000 – 2009	Total
High Frequency									
Low Frequency and DC									
Total Miles of Pipe									

Form RSPA F 7000.1-1 (10-03)

Continue on Next Page

Reproduction of this form is permitted.

PART F. MILES OF PIPE BY SPECIFIED MINIMUM YIELD STRENGTH		
	Onshore Miles	Offshore Miles
Less than 20 % SMYS		
Greater or equal to 20% SMYS		

PART G. MILES OF REGULATED GATHERING LINES	Total:

PART H. BREAKOUT TANKS	☐ Check here and proceed to Part I if you submitted breakout tank info via the National Pipeline Mapping System.				
Commodity	**Total Number of Tanks Less than or equal to 50,000 Bbls**	**Total Number of Tanks 50,001 To 100,000 Bbls**	**Total Number of Tanks 100,001 to 150,000 Bbls**	**Total Number of Tanks Over 150,000 Bbls**	**Total Number of Tanks**

PART I. VOLUME TRANSPORTED IN BARRELS – MILES OF:	
System Type 1: Crude oil:	
System Type 2: HVLs (flammable or toxic fluids, which are gases at ambient conditions, including anhydrous ammonia):	
Of all HVL volumes – report the amount that is anhydrous ammonia only	
System Type 3: Refined and/or petroleum products (gasoline, diesel, fuel or other petroleum products, liquid at ambient conditions):	
System Type 4. CO2, N2O, or other nonflammable, non-toxic fluids (gases at ambient temperature):	
Of all CO2, N2O or other nonflammable, non-toxic fluid volumes - report amount that is CO2 only	

PART J. INTEGRITY INSPECTIONS CONDUCTED AND ACTIONS TAKEN BASED ON INSPECTION	
1. MILEAGE INSPECTED USING THE FOLLOWING IN-LINE INSPECTIONS (ILI) TOOLS	
a. Corrosion or metal loss tools	
b. Dent or deformation tools	
c. Crack or long seam defect detection tools	
d. Any other internal inspection tools	
e. Total mileage inspected in calendar year using in-line inspection tools (lines a + b + c + d)	
2. ACTIONS TAKEN BASED ON IN-LINE INSPECTIONS	
a. Based on ILI data, how many anomalies were excavated because they met the operator's criteria for excavation.	
b. Total number of conditions identified and repaired or otherwise mitigated in calendar year based on the operator's criteria.	
Total Number of Anomolies Within an HCA Segment Meeting the Definition of:	
1. "immediate repair condition" [195.452(h)(4)(i)]	
2. "60 day condition" [195.452(h)(4)(ii)]	
3. "180-day condition" [195.452(h)(4)(iii)]	
3. PRESSURE TESTING	
a. Total mileage inspected by pressure testing.	
b. Total number of ruptures (complete failure of pipe wall) during hydrostatic testing.	
c. Total number of leaks (less than complete wall failure but including escape of test medium) during hydrostatic testing.	
d. Total number of hydrostatic test failures repaired during calendar year.	
4. OTHER INSPECTION TECHNIQUES, INCLUDING DIRECT ASSESSMENT	
a. Total mileage inspected by inspection techniques (other than pressure testing and in-line inspection)	
b. Total Number of Anomolies Within an HCA Segment Meeting the Definition of:	
1. "immediate repair condition" [195.452(h)(4)(i)]	
2. "60 day condition" [195.452(h)(4)(ii)]	
3. "180-day condition" [195.452(h)(4)(iii)]	
c. Total number of conditions identified by other inspection techniques (Lines 4.b.1 + 4.b.2 + 4.b.3) identified and repaired or otherwise mitigated in calendar year).	
5. TOTAL MILEAGE INSPECTED (ALL METHODS) AND ACTIONS TAKEN	
a. Total mileage **inspected** (Lines 1.e + 3.a + 4.a)	
b. Total number of conditions repaired or otherwise mitigated (Lines 2.b + 4.c)	

PART K. – MILEAGE OF BASELINE ASSESSMENTS COMPLETED	
a. Between January 1, 1996 and December 31, 2002 (previously acceptable assessments)	
b. Between January 1, 2003 and December 31, 2003	
c. Between January 1, 2004 and December 31, 2004	
d. Between January 1, 2005 and December 31, 2005	
e. Between January 1, 2006 and December 31, 2006	
f. Between January 1, 2007 and December 31, 2007	
g. Between January 1, 2008 and December 31, 2008	

PART L. - PREPARER AND AUTHORIZED SIGNATURE

(type or print) Preparer's Name and Title

Area Code and Telephone Number

Preparer's E-mail Address

Area Code and Facsimile Number

Authorized Signature

Area Code and Telephone Number

Form RSPA F 7000.1-1 (10-03)

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INSTRUCTIONS FOR COMPLETING FORM RSPA F 7000.1-1 (Draft Rev. 10-03)

ANNUAL REPORT FOR CALENDAR YEAR 20XX HAZARDOUS LIQUID PIPELINE SYSTEMS

GENERAL INSTRUCTIONS

All section references are to Title 49 of the Code of Federal Regulations.

Annual reports must be submitted by March 15 for the preceding calendar year.

Reporting requirements will be at §195.49 - Annual report, Title 49 of the Code of Federal Regulations (CFR) Transportation of Hazardous Liquids by Pipeline, upon completion of rulemaking.

Reports should be submitted to the address in §195.58. If you have questions about the report or these instructions, or need copies of Form RSPA F 7000-1.1(10-03), please contact:

Information Resources Manager
Office of Pipeline Safety
400 7th St., S.W., Room 7128
Washington, D.C. 20590-0001
(202)366-4569 or (202) 366-3731

Copies of the form and instructions are on the Office of Pipeline Safety's home page, http://ops.dot.gov in the FORMS section of the ONLINE LIBRARY upon completion of rulemaking.

Please type or print all entries.

Make an entry in each block for which data is available. Estimate data if necessary. Try to avoid entering mileage in the **Unknown** columns if possible.

The terms "barrel", "breakout tank", "carbon dioxide", "gathering line", "intrastate", "interstate", "hazardous liquid", "highly volatile liquid (HVL)", "offshore", "outer continental shelf (OCS)", "pipeline facility", "rural area", "specified minimum yield strength (SMYS)", etc., are defined in §195.2. The term "operator" is defined in §195.2 as a person who owns or operates pipeline facilities. For purposes of this report, the operator is further defined as the person ("person" is defined in 49 CFR §195.2) who exercises substantial control over the operation of the pipeline.

SPECIFIC INSTRUCTIONS

Enter the Calendar Year for which the report is being filed in the header of the form near the form title, bearing in mind that reporting requirements are for the preceding calendar year (i.e., for the March 15, 2005 deadline, reporting would be for calendar year 2004).

Check **Initial Report** if this is the original filing. Check **Supplemental Report** if this is a follow-up to a previously filed report to amend or correct information. On Supplemental Reports, enter all information requested in Parts A, J, K, and L, and only the new or revised information for the remainder of the form.

For System Type, it is the Office of Pipeline Safety's intent to collect individual reports for mileage by system type in order to alleviate any confusion in reporting mileage on multiple systems. Operators should remember that any subsequent filing of an incident report should reflect the corresponding system type as filed in the annual. The system types on both reports must be consistent for proper analysis.

File a separate report for each of the following system types:

Crude Oil - [n] a dark oil consisting mainly of hydrocarbons.

Highly Volatile Liquids (HVLs) - flammable or toxic fluids, which are gases at ambient conditions, including anhydrous ammonia (NH3)

Petroleum and Refined Products – gasoline, diesel, fuel, or other petroleum products, which are liquid at ambient conditions. Petroleum products means flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks, and other miscellaneous hydrocarbon compounds. For the sake of this report, "petroleum products" is meant to be synonymous with "refined products".

Carbon Dioxide (CO2) or Nitrous Oxide (N2O) - other non-flammable, non-toxic fluids (gases at ambient temperature).

PART A - OPERATOR INFORMATION

Insert the operator name and address. Enter the address where additional information can be obtained. The operator's five digit identification number appears on the RSPA mailing label. All operators that meet the requirements of a "person" under 49 CFR 195.2 must have an identification number. If the person completing the report does not have the operator identification number, this information may be requested from the Information Resources Manager.

Before continuing with the rest of the form, please read the below:

Important Information Regarding Mileage Reporting

Each hazardous liquid system operator with total mile(s) of one (1) or more mile(s) of pipeline is required to file an annual report.

Report **TOTAL** miles of pipeline in the system at the end of the reporting year, including additions to the system during that year. Please adhere to definitions in Title 49 Part 195 of the Code of Federal Regulations when reporting pipeline mileage.

Please round all mileage to the nearest mile. **DO NOT USE DECIMALS OR FRACTIONS.** Round decimals or fractions to the nearest whole number, (e.g., 3/8 or 0.375 should be rounded down; 3/4 or 0.75 should be rounded up; ½ or 0.5 should be rounded up). The entry for "Miles of Steel Pipe" in Parts B and C should be identical and reflect system totals. **Note: The form requests reporting in miles of pipeline, not feet.**

PART B - MILES OF STEEL PIPE BY LOCATION/PROTECTION

In Part B, report miles of steel pipe by location and protection. The form asks for mileage of onshore and offshore, cathodic protected or unprotected, and bare or coated pipe. **COATED** means pipe coated with an effective hot or cold applied dielectric coating or wrapper.

Part B also requires a report of the total miles of onshore/offshore pipe that could affect High Consequence Areas (HCAs).

PART C - MILES OF STEEL PIPE BY NOMINAL PIPE SIZE/LOCATION

In Part C, report the miles of steel pipe by Nominal Pipe Size (NPS) (outside diameter) and location for both onshore and offshore locations. Enter the appropriate mileage in the corresponding nominal size blocks. For clarification purposes, the following guidelines are offered:

Please note that pipe size which does not correspond to NPS measurements should be rounded up to the next larger category. For example, 7 inch pipe would fall in the NPS 8" block. Operators should use the closest approximation for diameter.

PART D - MILES OF PIPE BY DECADE INSTALLED

In Part D, report the miles of pipe by decade installed. Please see the General Instructions for amplifying information regarding old or unknown installation dates.

We recognize that some companies may have very old pipe for which installation records may not exist. Enter estimates of the totals of such mileage in the "Pre-20 or UNKNOWN" section of Part D "Miles of Pipe by Decade Installed".

PART E - MILES OF ERW PIPE BY WELD TYPE/DECADE

In Part E, miles of Electronic Resistance Weld (ERW) pipe by weld type and decade are entered according to year installed, and whether the pipe is high or low frequency.

"High Frequency" means the ERW pipe is high frequency ERW. High frequency ERW pipe is pipe that was manufactured using a much higher frequency electrical current, usually about 450 thousand Hertz (kHz) to provide heat for fusion of the weld seam. Most pipe using this process has been manufactured since the late 1960s.

"Low Frequency" means the ERW pipe is low frequency ERW. Low frequency ERW pipe is pipe that was manufactured using a 250 Hertz (Hz) alternating electrical current to provide heat for fusion of the weld seam. Most pipe using this process was manufactured prior to 1970.

"DC" means direct current.

If you need additional information, please check the OPS website at http://ops.dot.gov for documents further explaining ERW.

PART F - MILES OF PIPE BY SPECIFIED MINIMUM YIELD STRENGTH (SYMS)

Part F requires the total miles of pipe by specified minimum yield strength for pipe onshore and offshore by percentage SMYS. The data requested pertains to pipelines regulated by the Office of Pipeline Safety only and not those which are regulated by other federal or state authorities.

PART G - MILES OF REGULATED GATHERING LINES

Report the mileage of OPS regulated gathering lines only. Gathering lines are defined in CFR §195.2 as, "A pipeline 219.1mm (8e in) or less nominal outside diameter that transports petroleum from a production facility."

Rural gathering lines are considered to be unregulated gathering lines in accordance with 195.1(b)(4).

Include petroleum gathering line mileage under crude oil systems.

PART H - BREAKOUT TANKS

If you have submitted breakout tank information via the National Pipeline Mapping System, check the corresponding box and proceed to Part I.

If not, list the number of tanks by capacity and by commodity.

PART I - VOLUME TRANSPORTED IN BARRELS - MILES OF:

Include annual volume transported totals in barrel-miles regardless of state. Mixed system operators should report all mileage under the predominate system type for mixed commodity category systems. Barrel-miles means one barrel transported one mile. The volume transported should be consistent with the system type in order to have clear data for analysis.

PART J - INTEGRITY INSPECTIONS CONDUCTED AND ACTIONS TAKEN

Part J captures the integrity inspections conducted and actions taken based on inspection. Inspections means those inspections conducted in the reporting period calendar year (including Baseline, non-Baseline, and new construction). Part J is subdivided into five (5) sections.

Section 1 - Mileage inspected by In-Line Inspection (ILI) tool type.
Section 2 - Actions taken based on ILI inspections.
Section 3 - Pressure Testing.
Section 4 - Other Inspection Techniques (including Direct Assessment).
Section 5 - Total Mileage Inspected (all Methods) and Actions Taken.

PART K – MILEAGE OF COMPLETED BASELINE ASSESSMENTS

Part K captures the completed Baseline Assessments as required under 49 CFR Part 195.452. Of the total miles that could affect HCAs (see miles reported in Part B), and for the miles that the operator currently owns, enter the number of miles with completed Baseline Assessments for the appropriate corresponding year. Progress goals are to reach 50% in 2004, and for completed baseline programs by 2008.

Important Note: In order for this portion of the annual report to be completed, mileage reported here must meet the full requirements of 49 CFR 195.452 – inclusive of risk assessments, integration of information, integrity testing, repairs completed, and/or mitigation in place.

PART L - PREPARER AND AUTHORIZED SIGNATURE

PREPARER is the name of the person most knowledgeable about the report or the person to be contacted for more information. Please include the preparer's E-mail address if applicable.

AUTHORIZED SIGNATURE may be the preparer or a company officer, principal, or other person whom the operator or owner has designated to review and sign reports.

[FR Doc. 04–191 Filed 1–5–04; 8:45 am]
BILLING CODE 4910–60–C

Proposed Rules

Federal Register
Vol. 69, No. 3
Tuesday, January 6, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV04–981–2]

Almonds Grown in California; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of California almonds to determine whether they favor continuance of the marketing order regulating the handling of almonds grown in the production area.

DATES: The referendum will be conducted from February 9 through March 5, 2004. To vote in this referendum, growers must have been producing California almonds during the period August 1, 2002, through July 31, 2003.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487–5901; fax (559) 487–5906; or Anne Dec, Rulemaking Team Leader, Marketing Order Administration Branch, Fruit & Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491; fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 981 (7 CFR Part 981), hereinafter referred to as the ''order'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the growers. The referendum shall be conducted during the period February 9 through March 5, 2004, among California almond growers in the production area. Only growers that were engaged in the production of California almonds during the period of August 1, 2002, through July 31, 2003, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The Department would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of California almonds represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071 for California almonds. It has been estimated that it will take an average of 10 minutes for each of the approximately 7,000 growers of California almonds to cast a ballot. Participation is voluntary. Ballots postmarked after March 5, 2004, will not be included in the vote tabulation.

Martin Engeler of the California Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, is hereby designated as the referendum agent of the Department to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agent and from his appointees.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: December 30, 2003.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–169 Filed 1–5–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 25, 33, 121, and 135

[Docket No. FAA–2002–6717; Notice No. 03–11]

RIN 2120–AI03

Extended Operations (ETOPS) of Multi-engine Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on November 14, 2003 (68 FR 64730). In that document, the FAA proposed to issue regulations governing flights that go beyond certain distances from an adequate airport. This extension responds to requests received during the comment period for the NPRM.

DATES: Send your comments on or before March 15, 2004.

ADDRESSES: You may submit comments to DOT DMS Docket Number FAA–

2002–6717 by any of the following methods:

• Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

• Fax: 1–202–493–2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Eric vanOpstal, Flight Standards Service, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3774; facsimile (202) 267–5229.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this proposed rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impact that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search).*

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

The FAA published a notice (68 FR 64730, November 14, 2003) proposing to issue regulations governing the design, maintenance, and operations of airplanes and engines for flights that go beyond certain distances from an adequate airport. The notice provided for a 60-day comment period, ending on January 13, 2004.

Extension of Comment Period

In accordance with § 11.47 of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions submitted to the docket by several commenters requesting an extension of the comment period to Notice No. 03–11 (68 FR 64730). These petitioners requested an extension of time to adequately respond to the notice of proposed rulemaking. To allow additional time for a more thorough review of applicable issues and drafting of responsive comments, the FAA finds that there is good cause and it is in the public interest to extend the comment period for an additional 60 days beyond the 60 days already provided. Accordingly, the comment period for Notice No. 03–11 is extended until March 15, 2004.

Issued in Washington, DC, on December 31, 2003.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 03–32335 Filed 12–31–03; 2:31 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–16438; Airspace Docket No. 03–ASW–02]

RIN 2120–AA66

Proposed Modification of Restricted Areas 3801A, 3801B, and 3801C, Camp Claiborne, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Restricted Area 3801A (R–3801A),

3801B (R–3801B), and 3801C (R–3801C), at Camp Claiborne, LA. The United States Air Force (USAF) requested that the FAA take action to eliminate the area currently designated as R–3801A; expand the vertical limits of the areas currently designated as R–3801B and R–3801C; and reconfigure R–3801B and R–3801C into a new R–3801A, R–3801B, and R–3801C. Additionally, the USAF has requested that the FAA take action to change the controlling agency of R–3801A, R–3801B, and R–3801C from the FAA, Houston Air Route Traffic Control Center (ARTCC), to the U.S. Army, Fort Polk Approach Control. These modifications are proposed to fulfill new USAF training requirements for the practice of high altitude release bombing.

DATES: Comments must be received on or before February 20, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify ''FAA Docket No. FAA–2003–16438 and Airspace Docket No. 03-ASW–02,'' at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2003–16438 and Airspace Docket No. 03–ASW–02) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2003–16438 and Airspace Docket No. 03–ASW–02.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpo.access.gov/fr/index.html*

You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

As a result of new USAF training requirements, the FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to revise R–3801A, R–3801B, and R–3801C, at Camp Claiborne, LA. The USAF requested that the FAA take action to eliminate the area currently designated as R–3801A; expand the vertical limits of the areas currently designated as R–3801B and R–3801C from 14,000 feet MSL to FL 230; and reconfigure R–3801B and R–3801C into a new R–3801A, R–3801B, and R–3801C. The lateral boundaries of the new R–3801A, R–3801B, and R–3801C would be the same as the current R–3801B and R–3801C. The altitude structure for the revised airspace areas would be from the surface to 10,000 feet MSL for R–3801A; 10,000 feet MSL to FL180 for R–3801B; and FL180 to FL230 for R–3801C. The additional airspace is required to fulfill new USAF training requirements. Specifically, the new training requirements call for practicing the release of bombs from higher altitudes than are currently available within the existing airspace areas. Additionally, the USAF has requested that the FAA take action to change the controlling agency of R–3801A, R–3801B, and R–3801C from the FAA, Houston ARTCC, to the U.S. Army, Fort Polk Approach Control.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1D, Procedures for Handling Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.63 [Amended]

2. § 73.63 is amended as follows:

* * * * *

R–3801A Camp Claiborne, LA (Amended)

By removing the current boundaries, designated altitudes, and controlling agency, and substituting the following:

Boundaries. Beginning at lat. 31°11′46″ N., long. 92°30′16″ W.; to lat. 31°05′16″ N., long. 92°34′51″ W.; to lat. 31°13′56″ N., long. 92°49′46″ W.; to lat. 31°18′01″ N., long. 92°46′31″ W.; to lat. 31°15′16″ N., long. 92°41′46″ W.; to lat. 31°17′11″ N., long. 92°40′11″ W.; to the point of beginning.

Designated altitudes. Surface to, but not including, 10,000 feet MSL.

Controlling agency. U.S. Army, Fort Polk Approach Control.

* * * * *

R–3801B Camp Claiborne, LA (Amended)

By removing the current boundaries, designated altitudes, and controlling agency and substituting the following:

Boundaries. Beginning at lat. 31°11′46″ N., long. 92°30′16″ W.; to lat. 31°05′16″ N., long. 92°34′51″ W.; to lat. 31°13′56″ N., long. 92°49′46″ W.; to lat. 31°18′01″ N., long. 92°46′31″ W.; to lat. 31°15′16″ N., long. 92°41′46″ W.; to lat. 31°17′11″ N., long. 92°40′11″ W.; to the point of beginning.

Designated altitudes. 10,000 feet MSL to, but not including, FL 180.

Controlling agency. U.S. Army, Fort Polk Approach Control.

* * * * *

R–3801C Camp Claiborne, LA (Amended)

By removing the current boundaries, designated altitudes, and controlling agency and substituting the following:

Boundaries. Beginning at lat. 31°11′46″ N., long. 92°30′16″ W.; to lat. 31°05′16″ N., long. 92°34′51″ W.; to lat. 31°13′56″ N., long. 92°49′46″ W.; to lat. 31°18′01″ N., long. 92°46′31″ W.; to lat. 31°15′16″ N., long. 92°41′46″ W.; to lat. 31°17′11″ N., long. 92°40′11″ W.; to the point of beginning.

Designated altitudes. FL 180 to FL 230.

Controlling agency. U.S. Army, Fort Polk Approach Control.

* * * * *

Issued in Washington, DC, on December 30, 2003.

Paul Gallant,

Acting Manager, Airspace and Rules Division.

[FR Doc. 04–238 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AF84

Determining Income and Resources under the Supplemental Security Income (SSI) Program

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to revise our regulations that explain how we determine an individual's income and resources under the supplemental security income (SSI) program in order to achieve three program simplifications. First, we propose to eliminate clothing from the definition of income and from the definition of in-kind support and maintenance. As a result, we generally will not count gifts of clothing as income when we decide whether a person can receive SSI benefits or when we compute the amount of the benefits. Second, we propose to change our resource-counting rules in the SSI program by eliminating the dollar value limit for the exclusion of household goods and personal effects. As a result, we would not count household goods and personal effects as resources when we decide whether a person can receive SSI benefits. Third, we propose to change our rules for excluding an automobile in determining the resources of an SSI applicant or recipient. We propose to exclude one automobile (the ''first'' automobile) from resources if it is used for transportation for the individual or a member of the individual's household, without consideration of its value. These changes will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow. Our experience of nearly 30 years of processing SSI claims indicates that these simplifications would have minimal effect on the outcome of SSI eligibility determinations.

DATES: To be sure that we consider your comments, we must receive them by March 8, 2004.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal: *http://www.regulations.gov;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA, Social Security Online, at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

The basic purpose of the SSI program (title XVI of the Social Security Act (the Act)) is to ensure a minimum level of income to people who are age 65 or older, or blind or disabled, and who have limited income and resources. The law provides that payments can be made only to people who have income and resources below specified amounts. Therefore, the amount of income and resources a person has is a major factor in deciding whether the person can receive SSI benefits and in computing the amount of the benefits.

The General Accounting Office (GAO) has reported that annual costs to the Federal government for administering means-tested Federal programs are significant and that eligibility determination activities make up a substantial portion of these costs (Means-Tested Programs: Determining Financial Eligibility is Cumbersome and Can Be Simplified, *GAO–02–58,* November 2, 2001 available at *http://www.gao.gov*). In particular, the GAO cited the variations and complexity of Federal financial eligibility rules as contributing to processes that are often duplicative and cumbersome for staff workers (including state and local caseworkers) and for those who apply for assistance. In order to streamline our eligibility determination process, as well as make our financial eligibility rules more consistent with those of other means-tested Federal programs, we propose to make the following changes to our rules on determining income and resources under the SSI program.

Explanation of Proposed Changes

A. Elimination of Clothing from the Definitions of Income and In-kind Support and Maintenance

Section 1612 of the Act defines income as both earned income and unearned income, including support and maintenance furnished in cash or in kind. Under our current rules, income may include anything you receive in cash or in kind that you can use to meet your needs for food, clothing, and shelter. Both earned income and unearned income can include items received in kind. Generally, we value in-kind items at their current market value. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income.

In-kind support and maintenance is unearned income in the form of food, clothing, or shelter that is given to a person or that the person receives because someone else pays for it. Section 1612(a)(2)(A) of the Act provides that if an eligible individual receives in-kind support and maintenance, his or her SSI payment may be reduced by up to one-third of the monthly Federal benefit rate. To determine whether the one-third reduction applies, we must ask claimants and beneficiaries a lengthy series of questions about their living arrangements and household expenses. We also must obtain similar information from the homeowner or head of the household, who often is not a claimant or recipient.

The complexity of the rules for valuing in-kind support and maintenance results in reporting requirements that are difficult for the public to understand and follow. We are proposing to simplify the SSI program by eliminating clothing from the definition of income and from the definition of in-kind support and maintenance. Clothing is one of the basic sustenance needs, along with food and shelter. However, unlike food and shelter, clothing generally is not received every month. Items of clothing are more likely to be received infrequently and sporadically, and they generally have no substantial financial value. In addition, our attempts to discover and assign a value to gifts of clothing are not only administratively burdensome, but have been viewed as harsh and demeaning and as providing a disincentive for family members to help needy relatives.

After 30 years of administering the SSI program, our experience shows that clothing received as in-kind support and maintenance almost never affects an individual's eligibility for SSI or the amount of benefits. Thus, questioning individuals about items as personal as basic clothing may be seen as intrusive without achieving any substantial program goal or enhancing program integrity. We are proposing this change to simplify our rules and improve our work efficiency. This change would make our rules less intrusive and more protective of the dignity and privacy of claimants and beneficiaries, and would not significantly increase SSI program costs.

We propose to remove the specific reference to clothing from our broad definition of income in § 416.1102, which covers both earned and unearned income. This will permit us to disregard gifts of clothing when we apply the special rules for valuing in-kind support and maintenance. Counting gifts of clothing puts a negative face on the SSI program without advancing any substantial program goal and incurs administrative costs.

There will be one situation where we still would be required to consider clothing as income. This situation could occur when an individual receives clothing from an employer that we must count as wages under section 1612(a)(1)(A) of the Act. Wages are the same for SSI purposes as for the earnings test in the Social Security retirement program. Under the earnings test, wages may include the value of food, clothing, or shelter, or other items provided instead of cash. We refer to these items as in-kind earned income. Because we are required by the Act to count the value of these items as income, we are not proposing any changes to our current rule in § 416.1110(a). Situations where clothing constitutes wages are very uncommon.

These proposed rules would remove references to clothing throughout subpart K, which explains how we count income. We also are updating the second example in § 416.1103(g) to reflect that SSI eligibility is now based on an individual's income, resources, and other relevant circumstances in a month rather than in a calendar quarter. The change from a quarterly determination to a monthly determination, which is explained in § 416.420, was effective April 1, 1982 pursuant to section 2341 of Public Law 97–35. This example was inadvertently overlooked when conforming changes were previously made.

B. Exclusion of Household Goods and Personal Effects

Section 1613(a)(2)(A) of the Act provides that in determining the resources of an individual (and eligible spouse, if any) SSA will exclude household goods and personal effects to the extent that their total value does not exceed an amount that the Commissioner decides is reasonable. In interpreting ''reasonable'' value of household goods and personal effects, § 416.1216(b) of our regulations provides for an exclusion of up to $2,000 of the total equity value. The amount in excess of $2,000 is counted against the resource limit, currently $2,000 for an individual and $3,000 for an individual and spouse.

Section 416.1216(a) defines household goods as including household furniture, furnishings and equipment that are commonly found in or about a house and used in connection with the operation, maintenance and occupancy of the home. Also included are furniture, furnishings and equipment used in the functions and activities of home and family life as well as those items that are for comfort and accommodation. This section specifically defines personal effects as including clothing, jewelry, items of personal care, individual educational and recreational items. In addition, § 416.1216(c) provides specific exclusions for a wedding ring, an engagement ring and equipment required because of a person's physical condition.

To determine the equity value of household goods and personal effects, we ask the person for a list of household and personal items, the value of each, and what the individual owes on each. This process can be complex, difficult for the public to understand, and unduly intrusive into the person's affairs. We are proposing to amend these rules as part of our efforts to simplify the SSI program.

We propose to amend our regulations for household goods and personal effects by eliminating the dollar value limit and by excluding from countable resources all:

- Household goods if they are items of personal property, found in or near a home, that are used on a regular basis, or items needed by the householder for maintenance, use and occupancy of the premises as a home; and
- Personal effects if they are items of personal property that ordinarily are worn or carried by the individual, or are articles that otherwise have an intimate relation to the individual.

Thus, we would be interpreting the word ''reasonable'' in section 1613(a)(2)(A) of the Act in terms other than a specific dollar limit. The reasonable value would instead be based on the uses and characteristics of the item. Our current rules on household goods and personal effects

reflect our view that it is reasonable to totally exclude certain items of personal property because they are rarely of significant value or are intimately related to the individual and his or her particular needs. Accordingly, we have determined that requiring conversion of such items for subsistence needs would be unreasonable.

Currently, § 416.1216(c) provides for totally excluding a wedding ring and an engagement ring, and household goods and personal effect items required because of a person's physical condition. We propose to expand this approach generally to household goods and personal effects so that they may be totally excluded from resources because our experience in 30 years of administering the SSI program shows that these items almost never have any substantial value, particularly once they are used.

These proposed rules would amend § 416.1216 to define and identify household goods and personal effects that we will not count as resources. Included in the list of excluded personal effects are items of cultural or religious significance since these items have an intimate relationship to an individual. The list of exclusions also includes items required due to an individual's impairment. This would allow for exclusion of items required because of any impairment, not just physical impairments. For example, our experience has shown that children and adults with learning disabilities use personal computers to assist them with schoolwork and other daily activities. This change will allow us to exclude items such as personal computers from countable resources.

We also propose to amend § 416.1210(b) by referring to § 416.1216 for the definition of household goods and personal effects that we will not count as resources.

While simplifying the SSI program, our proposed changes continue to recognize that individuals applying for SSI may own items for investment purposes which may be quite valuable. Such items as gems, jewelry that is not worn or held for family significance, and collectibles would still be considered countable resources and subject to the limits in § 416.1205. Thus, the proposed exclusion for household goods and personal effects would not apply to such items that have investment value.

Our experience in administering the SSI program suggests that the change we are proposing would affect the eligibility of few applicants and recipients. However, this proposed change would simplify our rules and improve our work efficiency without significantly increasing program costs. It would make our rules less intrusive and more protective of the dignity of applicants and recipients. This intrusion into the privacy of a person's home puts an unnecessary negative face on the SSI program without achieving any corresponding gain in program integrity or payment accuracy. It also would more accurately reflect the reality that all SSI applicants and recipients need household goods and personal effects to perform activities of daily living and maintain quality of life. Accordingly, we believe it would be unreasonable to require applicants and recipients to convert these items to cash in order to meet their subsistence needs. The resale value of typical household items is minimal after the item has been used. Although it could be expensive to replace certain household items, these items would be worth very little if the individual tried to resell them to get cash for subsistence needs.

C. Exclusion of an Automobile from Resources

Section 1613(a)(2)(A) of the Act provides that, in determining the resources of an individual (and eligible spouse, if any) for SSI purposes, SSA will exclude an automobile to the extent that its value does not exceed an amount that the Commissioner of Social Security decides is reasonable. Current regulations at § 416.1218 define an ''automobile'' as a passenger car or other vehicle used to provide necessary transportation.

In interpreting ''reasonable'' value, § 416.1218(b)(1) provides that an automobile is totally excluded regardless of value if it meets any of the four following criteria:

- It is necessary for employment;
- It is necessary for the medical treatment of a specific or regular medical problem;
- It is modified for a handicapped person; or
- It is necessary because of certain factors to perform essential daily activities.

If no automobile can be excluded based on its use, one automobile is excluded to the extent its current market value does not exceed $4,500. *See* § 416.1218(b)(2). Additional automobiles are counted as nonliquid resources to the extent of their equity value. *See* § 416.1218(b)(3).

We propose to amend our rules to exclude one automobile from resources regardless of its value if it is used for transportation for the individual or a member of the individual's household. We are doing so because our data establish that the vast majority of ''first'' automobiles owned by SSI recipients are currently excluded based on one of the four transportation criteria set out in § 416.1218(b)(1). In addition, there is no indication that the automobiles which are not covered by the special circumstances represent significant resources. Based on quality assurance data for 1998, in approximately 98 percent of those SSI cases involving automobile ownership, the value of one car was completely excluded. Anecdotal data from SSA claims representatives support the 1998 quality assurance data.

We propose to revise § 416.1210(c) to exclude from resources an automobile that is used for transportation as provided in § 416.1218. We also propose to change § 416.1218(b) to exclude totally one automobile regardless of value if it is used for transportation for the individual or a member of the individual's household and to eliminate the existing four specific reasons for exclusion. We also propose to delete § 416.1218(c), which contains the definition of the current market value of an automobile.

Under current policy, we virtually always exclude one automobile for each individual or couple applying for or receiving SSI. Our aim in proposing to simplify the automobile rules is to achieve essentially the same outcome by automatically excluding one automobile used for transportation for each individual or couple without unnecessary claims development.

The Act states that we will exclude an automobile of ''reasonable'' value. We have previously interpreted the word ''reasonable'' in terms of the uses and needs of disabled individuals and in terms of dollar limits. Specifically, the preamble to the final regulation which increased the exclusion of the automobile value to $4,500 on July 24, 1979 (44 FR 43265) stated that we had ''concluded that that there are special circumstances which justify entirely excluding an automobile. For example, if the automobile is needed for employment or medical treatment or if it has been modified for use by a handicapped person, we will exclude it without regard to value.'' Since October 22, 1985 (50 FR 42687), the regulations also provide for total exclusion of an automobile if, due to certain factors, it is necessary for transportation to perform essential daily activities. Our experience shows that virtually all SSI claimants and recipients who have automobiles need them for transportation under the circumstances listed above.

It should be noted that our proposed interpretation of ''reasonable'' would

not eliminate the requirement to develop the value of second or additional automobiles. Nor will the ''first'' automobile be excluded if it is not used for transportation. In those cases where a vehicle is inoperable, or operable but not used at all, or used only for recreation (*e.g.*, a dune buggy), it would still be valued according to current rules. We believe it would be unreasonable to exclude from resources the value of a vehicle that is not used for transportation.

The proposed change would have a negligible affect on program costs and would simplify administration of the exclusion. It would eliminate the need for SSA claims representatives to ask the SSI recipient if his/her vehicle meets one of the four specific exclusion criteria or otherwise determine the value of the vehicle.

Clarity of These Regulations

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these proposed regulations would not have a significant economic impact on a substantial number of small entities, because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations would impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 1, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts K and L of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Section 416.1102 is revised to read as follows:

§ 416.1102 What is income?

Income is anything you receive in cash or in kind that you can use to meet your needs for food and shelter. Sometimes income also includes more or less than you actually receive (*see* § 416.1110 and § 416.1123(b)). In-kind income is not cash, but is actually food or shelter, or something you can use to get one of these.

3. Section 416.1103 is amended by revising the heading, the introductory text, paragraphs (a)(3), (a)(4), (a)(5) introductory text, (b)(2), (b)(3) introductory text, the examples in paragraph (g), and the introductory text and example 1 of paragraph (j) to read as follows:

§ 416.1103 What is not income?

Some things you receive are not income because you cannot use them as food or shelter, or use them to obtain food or shelter. In addition, what you receive from the sale or exchange of your own property is not income; it remains a resource. The following are some items that are not income:

(a) * * *

(3) Assistance provided in cash or in kind (including food or shelter) under a Federal, State, or local government program whose purpose is to provide medical care or medical services (including vocational rehabilitation);

(4) In-kind assistance (except food or shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

(5) Cash provided by any nongovernmental medical care or medical services program or under a health insurance policy (except cash to cover food or shelter) if the cash is either:

* * * * *

(b) * * *

(2) In-kind assistance (except food or shelter) provided under a nongovernmental program whose purpose is to provide social services; or

(3) Cash provided by a nongovernmental social services program (except cash to cover food or shelter) if the cash is either:

* * * * *

(g) * * *

Examples: If your daughter uses her own money to pay the grocer to provide you with food, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the grocer provides you with food; the food is in-kind income to you. Similarly, if you buy food on credit and your son later pays the bill, the payment to the store is not income to you, but the food is in-kind income to you. In this example, if your son pays for the food in a month after the month of purchase, we will count the in-kind income to you in the month in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, it is not in-kind income as defined in § 416.1102.

* * * * *

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in § 416.1130 or food) which would be an excluded nonliquid resource (as described in subpart L of this part) if you kept it, is not income.

Example 1: A community takes up a collection to buy you a specially equipped van, which is your only vehicle. The value of this gift *is not* income because the van does not provide you with food or shelter and will become an excluded nonliquid

resource under § 416.1218 in the month following the month of receipt.

* * * * *

§§ 416.1104, 416.1121, 416.1124, 416.1130, 416.1133, 416.1140, 416.1142, 416.1144, 416.1145, 416.1147, 416.1148, 416.1149, 416.1157 [Amended]

4. Remove the words ''food, clothing, or shelter'' and add, in their place, the words ''food or shelter'' in the following sections:

a. Section 416.1104;
b. Section 416.1121(b) and (h);
c. Section 416.1124(c)(3);
d. Section 416.1130(a) and (b);
e. Section 416.1133(a);
f. Section 416.1140(a)(1), (a)(2)(i), (a)(2)(ii), (b)(1), and (b)(2);
g. Section 416.1142(b);
h. Section 416.1144(b)(2);
i. Section 416.1145;
j. Section 416.1147(c) and (d)(1);
k. Section 416.1148(b)(1) and (b)(2);
l. Section 416.1149(c)(1)(i) and (c)(1)(ii); and
m. Section 416.1157(b).

Subpart L—[Amended]

5. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

6. Section 416.1210 is amended by revising paragraphs (b) and (c) to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(b) Household goods and personal effects as defined in § 416.1216;

(c) An automobile, if used for transportation, as provided in § 416.1218;

* * * * *

7. Section 416.1216 is revised to read as follows:

§ 416.1216 Exclusion of household goods and personal effects.

(a) *Household goods.* (1) We do not count household goods as a resource to an individual (and spouse, if any) if they are:

(i) Items of personal property, found in or near the home, that are used on a regular basis; or

(ii) Items needed by the householder for maintenance, use and occupancy of the premises as a home.

(2) Such items include but are not limited to: Furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.

(b) *Personal effects.* (1) We do not count personal effects as resources to an individual (and spouse, if any) if they are:

(i) Items of personal property ordinarily worn or carried by the individual; or

(ii) Articles otherwise having an intimate relation to the individual.

(2) Such items include but are not limited to: Personal jewelry including wedding and engagement rings, personal care items, prosthetic devices, and educational or recreational items such as books or musical instruments. We also do not count as resources items of cultural or religious significance to an individual and items required because of an individual's impairment. However, we do count items that were acquired or are held for their value or as an investment because we do not consider these to be personal effects. Such items can include but are not limited to: Gems, jewelry that is not worn or held for family significance, or collectibles. Such items will be subject to the limits in § 416.1205.

8. Section 416.1218 is amended by revising paragraph (b)(1), removing paragraph (b)(2), revising and redesignating paragraph (b)(3) as (b)(2), and removing paragraph (c) to read as follows:

§ 416.1218 Exclusion of the automobile.

* * * * *

(b) * * *

(1) *Total exclusion.* One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household.

(2) *Other automobiles.* Any other automobiles are considered to be nonliquid resources. Your equity in the other automobiles is counted as a resource. (*See* § 416.1201(c).)

[FR Doc. 04–60 Filed 1–5–04; 8:45 am]

BILLING CODE 4191–02–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AL–62–200403; FRL–7607–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of Birmingham Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 19, 2003, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted a request to redesignate the 1-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Birmingham, Alabama to attainment, and a request for EPA approval of a draft Alabama State Implementation Plan (SIP) revision containing a 10-year maintenance plan for the Birmingham area. Today, EPA is proposing approval of the 1-hour ozone redesignation request and the draft maintenance plan SIP revision. EPA's proposed approval of the 1-hour ozone redesignation request is based on its determination that the Birmingham, Alabama area has met the five criteria for redesignation to attainment specified in the Clean Air Act, including a demonstration that the area has attained the 1-hour ozone national ambient air quality standard. EPA is parallel processing the draft maintenance plan SIP revision (a required component of any redesignation to attainment) and is proposing approval of this draft maintenance plan because EPA has determined that the draft plan complies with the requirements of section 175A of the Clean Air Act.

Additionally, through this proposed action, EPA is providing the public an opportunity to review and comment on the adequacy of new volatile organic compounds (VOC) and nitrogen oxides (NO_X) motor vehicle emission budgets (MVEBs) for purposes of determining transportation conformity. These new MVEBs are contained within the draft maintenance plan SIP revision for the Birmingham area. If EPA concludes, after reviewing any comments submitted, that Alabama's proposed new NO_X and VOC MVEBs are adequate, and if Alabama submits a final maintenance plan SIP revision with no substantive changes that would affect EPA's adequacy determination, then the new MVEB budgets would be applicable for transportation conformity determinations after the effective date of an EPA adequacy determination (published in the **Federal Register**) or on the date of final rulemaking of an EPA approval of Alabama's maintenance plan SIP revision if EPA chooses to make its final adequacy determination in that maintenance plan final rulemaking notice.

DATES: Written comments must be received on or before February 5, 2004.

ADDRESSES: Comments may be submitted by mail to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and

Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections VII.B.1. through 3. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Sheckler can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking?

EPA is proposing to take two related actions and is providing public notice and seeking public comment on a third action. First, EPA is proposing to approve a change in the legal designation of the Birmingham area from nonattainment to attainment for the 1-hour ozone national ambient air quality standard. Second, in a related action, EPA is proposing to approve Alabama's draft maintenance plan SIP revision for the Birmingham area (such approval being a CAA criteria for redesignation to attainment status). The draft maintenance plan is designed to keep the Birmingham area in attainment for ozone for the next 10 years. Third, in support of the transportation conformity process, EPA is, through this proposal, providing public notice and taking public comment on Alabama's new draft VOC and NO_X MVEBs for the year 2015 that are part of its draft maintenance plan SIP revision for the Birmingham area. The availability of the draft maintenance plan SIP revision with the MVEBs for 2015 was announced on EPA's web page on *http://www.epa.gov/oms/transp* (Once there, click on the ''Transportation Conformity'' link, then click on ''Adequacy Review of SIP Submissions''). More information on the MVEBs is contained in Section VI: Public notice and request for comment on adequacy of Alabama's new 2015 NO_X and VOC MVEB for transportation conformity purposes.

II. What Is the Background for This Action?

The CAA requires EPA to establish NAAQS for certain pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (CAA sections 108 and 109). In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone NAAQS (44 FR 8202 (February 8, 1979)). Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

The CAA also required EPA to designate as nonattainment any area that was violating the 1-hour ozone NAAQS, generally based on air quality monitoring data from the three-year period from 1987–1989, or any area contributing to a violation (CAA section 107(d)(4); 56 FR 56694 (November 6, 1991)). The CAA further classified these nonattainment areas, based on the area's design value (*i.e.,* the 4th highest ozone value during the relevant three year period at the violating monitor with the highest ozone levels), as marginal, moderate, serious, severe or extreme (CAA section 181(a)), with marginal areas experiencing the least significant air pollution problems. The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date. Marginal areas were required to attain the 1-hour NAAQS by November 15, 1993 under section 181(a) of the Clean Air Act.

Under EPA regulations at 40 CFR part 50, the 1-hour ozone standard is attained when the expected number of days per calendar year with maximum hourly average ozone concentrations above 0.12 ppm or higher is equal to or less than 1, as determined in appendix H of part 50. Under Appendix H, the basic method is to record the number of exceedances of the standard monitored at each site in an area for each calendar year and then average the past three calendar years to determine if this average is less than or equal to one. In other words, an area has attained the 1-hour ozone NAAQS if there are three or fewer exceedances recorded over a three-year period at each of the monitoring sites within the area. If there are more than three exceedances over a three-year period at any of the monitoring sites, the area has not attained the standard.

The Birmingham area was originally designated as a 1-hour ozone nonattainment area by EPA on March 3, 1978 (43 FR 8962). At that time, the Birmingham nonattainment area was geographically defined as Jefferson County, Alabama. On November 6, 1991, by operation of law under section 181(a) of the CAA as amended in 1990, EPA classified the Birmingham nonattainment area as a marginal nonattainment area for ozone and added Shelby County to the nonattainment area (56 FR 56693). The 1991 classification for the Birmingham marginal 1-hour ozone nonattainment area was based on ambient air sampling measurements for ozone made during 1987–1989. As noted above, the area was required to attain the 1-hour ozone NAAQS by November 15, 1993.

After the summer of 1993, Alabama had three years of air monitoring data (1991, 1992 and 1993) which demonstrated that the 1-hour ozone NAAQS was attained making the Birmingham nonattainment area eligible for redesignation to attainment. The State submitted a final redesignation request on March 16, 1995, that was deemed administratively complete by EPA on April 11, 1995. A direct final rule proposing approval of the redesignation request was signed by the Regional Administrator and forwarded to the Office of the Federal Register on August 15, 1995, for publication. Prior to publication of the document, a violation of the 1-hour ozone NAAQS occurred on August 18, 1995. EPA directed the Office of the Federal Register to recall the proposed direct final rule from publication. The final action disapproving the redesignation request was published in the **Federal Register** on September 19, 1997, (62 FR 49154).

Following EPA's 1997 disapproval of the Birmingham redesignation request, EPA proposed a SIP call to Alabama in the **Federal Register** on December 16, 1999 (64 FR 70205). In the SIP call, EPA

proposed to require the State to submit an attainment demonstration SIP for Birmingham within six months after final action is taken on the SIP call and to implement controls by May 2003. The final rulemaking on the attainment demonstration SIP call was published October 28, 2000, with an effective date of November 27, 2000 (65 FR 64352).

ADEM submitted its 1-hour ozone attainment demonstration for Birmingham to EPA on November 1, 2000. In the attainment demonstration SIP, ADEM elected to develop a control strategy based on photochemical grid modeling, even though such modeling is not required by the Clean Air Act for marginal nonattainment areas. EPA approved the Alabama's attainment demonstration SIP on November 7, 2001 (66 FR 56223).

On November 19, 2003, Alabama requested redesignation of the ozone attainment status for the Birmingham area. This request is the subject of the current proposed rulemaking. The redesignation request included data for the period of 2001 through 2003, indicating the 1-hour NAAQS standard for ozone had been achieved for the Birmingham area. The data satisfies the CAA requirements of no more than one exceedance per annual monitoring period. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient data is available to warrant the redesignation and the area meets the other four (4) CAA redesignation requirements.

III. Why Is EPA Taking This Action?

The 1990 Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area has attained the applicable NAAQS; (2) the area has met all applicable requirements under section 110 and part D of the CAA; (3) the area has a fully approved SIP under section 110(k) of the CAA; (4) the air quality improvement is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions, and (5) the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 107(d)(3)(D) allows a Governor to initiate the redesignation process for an area to apply for attainment status. On November 19, 2003, Alabama requested redesignation of the ozone attainment status for the Birmingham area.

IV. What Evaluation Criteria was Used?

EPA is proposing to determine that the Birmingham nonattainment area has attained the 1-hour ozone standard because all five redesignation criteria have been met. The basis for EPA's proposed determination is as follows:

1. *Birmingham has attained the 1-hour ozone NAAQS:* EPA has determined that the Birmingham area has attained the 1-hour ozone national ambient air quality standard. For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in Aerometric Information Retrieval System (AIRS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

ADEM submitted ozone monitoring data for the April through October ozone season from 2001 to 2003. This data has been quality assured and is recorded in AIRS. During the 2001 to 2003 time period, the design value is 0.113 ppm. The average annual number of expected exceedances is 1.0 for that same time period. The State of Alabama's request is based on an analysis of quality-assured ozone air quality data which is relevant to the redesignation request. The data come from the State and Local Air Monitoring Station network. The request is based on ambient air ozone monitoring data collected for 3 consecutive years from 2001 through 2003. In a letter dated December 3, 2003, ADEM certified the Shelby County 2003 data is accurate and in a letter dated December 3, 2003, Jefferson County Department of Health certified the Jefferson County 2003 data is accurate. The exceedances are summarized in the following table:

Monitor	County	2001–2003	2001	2002	2003
Fairfield	Jefferson	0	0	0	0
McAdory	Jefferson	1	1	0	0
Hoover	Jefferson	0	0	0	0
Pinson	Jefferson	0	0	0	0
Tarrant	Jefferson	1	1	0	0
Corner	Jefferson	0	0	0	0
Providence	Jefferson	0	0	0	0
N Birmingham	Jefferson	0	0	0	0
Helena	Shelby	2	1	1	0
Leeds	Jefferson	1	0	1	0

In addition, ADEM has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Alabama provides an adequate demonstration that Birmingham area has attained the 1-hour ozone NAAQS.

2. *Birmingham has met all applicable requirements under section 110 and part D of the CAA.* EPA has determined that Alabama has met all applicable SIP requirements for the Birmingham area under section 110 of the CAA (general SIP requirements). EPA has also determined that the Alabama SIP meets applicable SIP requirements under part D of the Clean Air Act (requirements specific to marginal nonattainment areas).

General SIP requirements: Section 110(a)(2) of the CAA delineates the general requirements for a SIP, which include enforceable emission limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. These requirements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate

Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. These documents are available at the address above.

EPA has analyzed the Alabama SIP and determined that it is consistent with the requirements of CAA section 110(a)(2). The SIP contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting.

Part D requirements: EPA has also determined that the Alabama SIP meets applicable SIP requirements under part D of the Clean Air Act. Under part D, an area's classification (marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Part D, Subpart 1 applicable requirements: EPA has determined that requirements of part D, subpart I, are not applicable requirements for the purpose of evaluating redesignations.

Part D, subpart 2 applicable requirements: For purposes of evaluating this redesignation, the applicable part D, subpart 2 requirements for the Birmingham marginal nonattainment area are contained in section 182(a)(1)–(4), and EPA is proposing to determine that these applicable requirements have been met for the reasons noted below:

- 1990 Base Year Inventory—Alabama submitted this inventory on November 13, 1992. It was approved June 4, 1999 (64 FR 29958).
- Reasonably Available Control Technology (RACT) Requirements—Alabama revised its RACT rules which were approved September 27, 1993 (62 FR 30991).
- Saving Clause for Vehicle Inspection and Maintenance (I/M)—A I/M program was not required or implemented in the Birmingham area prior to 1990, therefore, this provision was not applicable.
- Permit Program—Alabama has an approved permit program.
- Periodic Inventory—The most recent inventory for Birmingham was compiled for 1999. Alabama's emissions statements program was approved August 4, 1994 (59 FR 39683).
- General Offset Requirement—Approval of Alabama's revised offsets program (for at least a 1.1 to 1.0 offset of new major sources of VOC emissions only) was granted on August 30, 1993 (58 FR 45439).

3. *The area has a fully approved SIP under section 110(k) of the CAA.* EPA has fully approved the Alabama SIP for the Birmingham area under section 110(k) of the Clean Air Act. Following passage of the CAA of 1970, Alabama has adopted and submitted and EPA has fully approved at various times provisions addressing the various SIP elements applicable in the Birmingham area. No Birmingham area SIP provisions are currently disapproved, conditionally approved, or partially approved.

(4) *The air quality improvement in the Birmingham area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.* EPA approved Alabama's SIP control strategy for the Birmingham area, including rules and the emission reductions achieved as a result of those rules that are enforceable. Several Federal and Statewide rules are in place which have significantly improved the ambient air quality in these areas. Beginning in 2003, utility NO_X controls on Alabama Power Company plants Gorgas and Miller will operate for the period May 1 to September 30 each year beginning in 2003. These controls will provide for 68.2 tons per day (tpd) reduction of NO_X emissions. These emission limitations will be enforced by establishing a 0.21 lb/mmBtu NO_X emission limit for the two plants based on a rolling 30 day average from May 1 through September 30 of each year. The limit is based on a two plant average and the rolling 30 day averages are based on a heat input-weighted average of NO_X emissions from all units at the two plants.

On November 1, 2000, the State of Alabama requested that EPA consider and approve their request for low-Reid Vapor Pressure (RVP) and low-sulfur fuel controls to apply in both Jefferson and Shelby counties. The controls required that all gasoline sold during the control period (June 1 through September 15) in these counties contain a maximum RVP of 7.0 pounds per square inch and maximum sulfur levels of 150 parts per million volume-weighted average. The State provided the fuel rule and the necessary justification for this rule as a part of the Birmingham Attainment Demonstration (*see* appendix I and II of that document). The State control on sulfur applied only through the summer of 2003. After that time, the State control for sulfur terminated, and Federal controls on sulfur in gasoline (*i.e.*, through EPA's 2004 Tier 2/Low Sulfur Rule—*see* 65 FR 6698) apply. The RVP controls for the Alabama fuel control area does not have a sunset date. On September 11, 2001, EPA proposed approval of the Birmingham fuel control program (66 FR 47142). The final rulemaking for EPA's approval was published in the **Federal Register** on November 7, 2001 (66 FR 56218).

Also, existing programs, such as the Federal Motor Vehicle Control Programs, the Federal Reid Vapor Pressure Control Program, Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements and the Regional NO_X Reduction Program, will not be lifted upon redesignation. These programs and others will counteract emissions growth as the areas experience economic growth over the life of their maintenance plans. The applicable RACT rules will also remain in place in Birmingham. In addition, the State permits program, the PSD permits program, and the Operating Permits program will help counteract emissions growth. EPA finds that the combination of existing EPA-approved SIP and Federal measures ensure the permanence and enforceability of reductions in ambient ozone levels that have allowed the area to attain the NAAQS.

(5) *The area has a fully approved maintenance plan pursuant to section 175A of the CAA.*

In conjunction with its request to redesignate the Birmingham nonattainment area to attainment status, Alabama submitted a draft SIP revision to provide for the maintenance of the 1-hour ozone NAAQS in the Birmingham area for at least 10 years after redesignation. Because the maintenance plan SIP revision is not yet State-

effective, Alabama requested that EPA ''parallel process'' the SIP revision. Under this procedure, the Regional Office works closely with Alabama while developing new or revised regulations. The State submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed State action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that Alabama is holding its public hearing. Alabama and EPA then provide for concurrent public comment periods on both the State action and the Federal action.

After Alabama submits the formal State-effective SIP revision request (including a response to all public comments raised during the state's public participation process, and the approved Maintenance Plan for the Birmingham area), EPA will prepare a final rulemaking notice on the maintenance plan SIP revision. If Alabama's formal maintenance plan SIP revision contains changes which occur after EPA's notice of proposed rulemaking, such changes must be described in EPA's final rulemaking action. If Alabama's changes are significant, then EPA must decide whether it is appropriate to re-propose the State's maintenance plan SIP revision action. In addition, if Alabama's formal maintenance plan SIP revision changes significantly and is disapprovable in its final form, EPA will also propose disapproval of the Birmingham redesignation request because the existence of a fully EPA-approved maintenance plan is a necessary criteria for redesignation to attainment status.

Section 175A of the CAA sets forth the elements of maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan contains contingency measures, with a schedule for implementation, adequate to assure prompt correction of any future 1-hour ozone violations.

On November 19, 2003, ADEM submitted its draft revision to the Alabama SIP to include a 10-year maintenance plan as required by section 175A of the Clean Air Act. The underlying strategy of the maintenance plan is to show compliance and maintenance of the 1-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year (2003) emission levels. Using 2002 as the base year, the subsequent inventory years were generally chosen as 2003 (attainment year), an interim year set as 2008 (to demonstrate continuing emission reductions) and 2015 which is the end of the 10 year maintenance plan.

NO_X EMISSIONS TPD

County	Source category	2002	2003	2008
Total for the Birmingham Area:				
Point	207	182	157	165
Area	4	4	4	5
Mobile	57	50	35	20
Nonroad	25	25	26	29
Total	293	261	222	219

Maintenance Plan Decrease from 2003:

NO_X Safety Margin: 42

VOC EMISSIONS TPD

County/Source Category	2002	2003	2008	2015
Total for the Birmingham Area:				
Point	19	19	21	23
Area	55	55	58	63
Mobile	39	34	23	16
Nonroad	18	17	14	12
Total	131	125	116	114

Maintenance Plan Decrease from 2003:

VOC Safety Margin: 11

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example, the Birmingham area attained the 1-hour ozone NAAQS during the 2001–2003 time period. Alabama uses 2003 as the attainment level of emissions for the area. The emissions from point, area, nonroad, and mobile sources in 2003 equaled 125 tpd of VOC for the Birmingham area. Projected VOC emissions out to the year 2015 equaled 114 tpd of VOC. The safety margin for VOCs is calculated to be the difference between these amounts or, in this case, 11 tpd of VOC for 2015. By this same method, 42 tpd (*i.e.*, 261 tpd less 219 tpd) is the safety margin for NO_X for 2015. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained. The credit, or a portion thereof, can be allocated to any of the source categories. The State of Alabama has also committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR part 58.

In addition, the maintenance plan includes the following contingency measures to correct any future violations of the 1-hour ozone standard and timeline for development:

1. Identify potential stationary sources for reductions: 3 months.
2. Identify applicable RACT: 3 months.
3. Initiate a stakeholder process: 3 months.
4. Draft SIP regulations: 3 months.
5. Initiate rulemaking process (including public comment period, hearing, Commission adoption and final submission to EPA): 6 months.

Completion no later than: 18 months.

Based on Alabama's draft maintenance plan SIP revision submittal, EPA is proposing to approve the maintenance plan for the Birmingham area because it meets the requirements of section 175A.

V. Proposed Action on the Redesignation Request and the Draft Maintenance Plan SIP Revision

EPA is proposing to approve the redesignation of Birmingham nonattainment area from nonattainment to attainment for the 1-hour ozone NAAQS. EPA has evaluated the State of Alabama's redesignation request and determined that it meets the five redesignation criteria set out in section 107(d) of the Clean Air Act. EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the 1-hour ozone standard. The final approval of this redesignation request would change the official designation for the Birmingham area from nonattainment to attainment for the 1-hour ozone standard.

EPA is also proposing to approve the draft maintenance plan SIP revision

submitted by Alabama for the Birmingham area in conjunction with its redesignation request. EPA is proposing to approve the maintenance plan for the Birmingham area because it meets the requirements of section 175A as described more fully above.

VI. Public Notice and Request for Comment on Adequacy of Alabama's New 2015 NO_X and VOC MVEB for Transportation Conformity Purposes

Through this proposed rulemaking, EPA is also providing pubic notice and seeking public comment on the adequacy of Alabama's new proposed NO_X and VOC motor vehicle emissions budget for the year 2015. The public comment period for commenting on the adequacy of Alabama's new proposed NO_X and VOC MVEB is 30 days from the publication date of this notice. For further information on commenting, see section VII below.

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*e.g.* reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create motor vehicle emission budgets (MVEBs) for criteria pollutants and/or their precurors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*e.g.* be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. If a transportation plan does not ''conform,'' most projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a state implementation plan.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the state implementation plan as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining ''adequacy'' of an MVEB is set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEB budgets is set out in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision''. This guidance is incorporated into EPA's June 30, 2003, EPA proposed rulemaking entitled ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (68 FR 38974). EPA follows this guidance in making its adequacy determination.

EPA's ''adequacy'' processing guidance allows EPA to ''parallel process'' a MVEB adequacy review. Under parallel processing, as noted above, a state submits a proposed SIP to EPA, and the state and EPA then request public comment on the proposed SIP and the adequacy of the MVEBs included in the SIP at the same time. If no significant adverse comments are received at either the state or Federal levels, EPA could then make an adequacy finding as soon as the state formally adopts the SIP and submits it to EPA, as long as no substantive changes to the SIP have occurred that would affect the adequacy of the MVEBs. However, if the formal maintenance plan submission changes in a way that affects the adequacy of the proposed MVEBs, the adequacy review process would start over: EPA would announce that we have a submitted SIP under adequacy review and reopen the comment period.

Alabama's currently effective NO_X and VOC MVEBs for 2003 were submitted to EPA in its 1-hour ozone attainment demonstration SIP on November 1, 2000, and deemed adequate through a June 7, 2001, **Federal Register** notice (66 FR 30737) effective June 22, 2001. Alabama's new draft maintenance plan SIP revision that is the subject of this proposed notice and which was submitted to EPA on November 19, 2003, contains Alabama's new proposed NO_X and VOC MVEBs for transportation conformity purposes for the year 2015. The availability of the draft maintenance plan SIP revision with the MVEBs for 2015 was announced on EPA's Web page on:

http://www.epa.gov/oms/transp (Once there, click on the ''Transportation Conformity'' link, then click on ''Adequacy Review of SIP Submissions''). The following table highlights the 2003 MVEB and defines the 2015 MVEB for Birmingham.

BIRMINGHAM NONATTAINMENT AREA MVEB

	2003	2015
NO_X TPD	65	41
VOC TPD	52	23

For the year 2015, the available safety margin was 42 tpd for NO_X and 11 tpd for VOC. After partial allocation of the safety margin to the MVEB, the remaining safety margins are 21 tpd for NO_X and 4 tpd for VOC.

EPA is parallel processing this 2015 NO_X and VOC MVEB adequacy review. Because Alabama's maintenance plan is a draft submittal that contains these 2015 MVEBs, EPA is electing to use this proposed rulemaking (consistent with our May 14, 1999 Conformity Guidance) as a vehicle to provide public notice of, and request public comment on, the adequacy of the proposed new NO_X and VOC MVEBs for transportation conformity purposes. EPA intends to finalize its adequacy determination for the new 2015 NO_X and VOC MVEBs following a thorough review of all public comments received and an evaluation of whether the adequacy criteria have been met. If EPA concludes, after reviewing any comments submitted, that Alabama's proposed new 2015 NO_X and VOC MVEBs are adequate, and if Alabama submits a final maintenance plan SIP revision with no substantive changes that would affect EPA's adequacy determination, then the new 2015 MVEB budgets would be applicable for transportation conformity determinations after the effective date of an EPA adequacy determination (published in the **Federal Register**) or on the date of final rulemaking of an EPA approval of Alabama's maintenance plan SIP revision if EPA chooses to make its final adequacy determination in that maintenance plan final rulemaking notice.

VII. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under AL–62. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking AL–62.'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *lakeman.sean@epa.gov*, please include the text ''Public comment on proposed rulemaking AL–62.'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking AL–62.'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the

outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 23, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–211 Filed 1–5–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2188–P]

RIN 0938–AN01

Medicaid Program; Time Limitation on Recordkeeping Requirements Under the Drug Rebate Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: On August 29, 2003, we published a final rule with comment period in the **Federal Register** that finalized two specific provisions: it established new 3-year recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program and set a 3-year time limitation during which manufacturers must report changes to average manufacturer price and best price for purposes of reporting data to us. In addition, it announced the pressing need for codification of fundamental recordkeeping requirements. On September 26, 2003, we issued a correction notice to change the effective date of the August 29, 2003 rule from October 1, 2003 to January 1, 2004. In this proposed rule, we propose removing the 3-year recordkeeping requirements and replacing them with 10-year recordkeeping requirements. We also propose that manufacturers must retain records beyond the 10-year period if the records are the subject of an audit or a government investigation.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 8, 2004.

ADDRESSES: In commenting, please refer to file code CMS–2188–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address

ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2188–P, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:
Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marge Watchorn, (410) 786–4361.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

In order for a pharmaceutical manufacturer's products to be eligible for Medicaid reimbursement under section 1903(a) of the Social Security Act (the Act), the manufacturer must sign an agreement with us on behalf of the Secretary of Health and Human Services to participate in the Medicaid drug rebate program. Among the terms to which the manufacturer must agree is the requirement to retain pricing data to support the calculation of average manufacturer price and best price as defined in section 1927 of the Act. Absent a regulatory or statutory requirement, it has been our position that manufacturers must retain these records indefinitely.

On September 19, 1995, we published a proposed rule in the **Federal Register** that proposed numerous provisions related to the Medicaid drug rebate program. As relevant to this proposed rule, we proposed new 3-year recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program and proposed a 3-year time limitation during which manufacturers must report changes to average manufacturer price and best price for purposes of reporting data to us. On August 29, 2003, we published a final rule with comment period in the **Federal Register** that finalized both provisions. In addition, we announced the pressing need for codification of fundamental recordkeeping requirements. On September 26, 2003, we issued a correction notice in the **Federal Register** to change the effective date of the August 29, 2003 rule from October 1, 2003 to January 1, 2004. In a separate document published today in the **Federal Register** (CMS–2175–IFC), we are removing the 3-year recordkeeping requirements and replacing them with temporary 10-year recordkeeping requirements for the period January 1, 2004 through December 31, 2004.

In this proposed rule, we propose removing the 3-year recordkeeping requirements and replacing them with 10-year recordkeeping requirements. We also propose that manufacturers must retain records beyond the 10-year period if the records are the subject of an audit or a government investigation of which the manufacturer is aware. We propose that the 10-year recordkeeping requirement be effective without a sunset date provision.

II. Provisions of the Proposed Regulations

This proposed rule would establish a 10-year recordkeeping requirement for prescription drug manufacturers that participate in the Medicaid drug rebate program. This provision would be set forth in 42 CFR part 447 subpart I. Under the 10-year recordkeeping requirement, a drug manufacturer would be required to retain records for 10 years from the date the manufacturer reports that rebate period's data to us. In addition, a manufacturer would be required to retain data beyond the 10-year period if the records are the subject of an audit or a government investigation of which the manufacturer is aware and if the audit findings or investigation related to the manufacturer's average manufacturer price and best price have not been resolved.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the following section of this document that contains information collection requirements:

Section 447.534(h) of this document contains the information collection requirements. We are seeking comment on these requirements in CMS–2175–IFC, in conjunction with a request for emergency approval for revisions to OMB 0938–0578. We are also seeking

comment through this proposed rule; we are requesting reapproval of these requirements.

There are two recordkeeping requirements in § 447.534(h):

(1)(i) A manufacturer must retain records (written or electronic) for 10 years from the date the manufacturer reports that rebate period's data. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations. The 10-year timeframe applies to a manufacturer's quarterly submission of pricing data as well as any revised pricing data subsequently submitted to us.

(ii) A manufacturer must retain records beyond the 10-year period if both of the following circumstances exist: (A) The records are the subject of an audit or of a government investigation related to pricing data that are used in average manufacturer price or best price of which the manufacturer is aware, and (B) The audit findings or investigation related to the average manufacturer price and best price have not been resolved.

The burden associated with the recordkeeping is minimal, a maximum of $1.00 per year for a compact disc per manufacturer. Staffing costs are unknown and being researched; we welcome comments.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Julie Brown, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be e-mailed to the following address: e-mail: baguilar@omb.eop.gov; or faxed to OMB at (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We believe this rule would not have an economically significant effect. We believe the rule would result in neither costs nor savings to the Medicaid program and that additional costs to drug manufacturers would be minimal. We do not consider this rule to be a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less in any 1 year. For purposes of the RFA, pharmaceutical manufacturers with 750 or fewer employees are considered small businesses according to the Small Business Administration's size standards matched to the North American Industry Classification System, effective October 1, 2002, *http://www.sba.gov/size/sizetable2002.html*). Use of the Small Business Administration's size standards matched to North American Industry Classification System is in compliance with the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432. Individuals and States are not included in the definition of a small entity. Because pharmaceutical manufacturers are not required to report their number of employees to the Small Business Administration, we are unable to determine how many of them are considered small entities. This rule would not have a significant impact on small businesses because although some pharmaceutical manufacturers may be small businesses, we estimated that the cost to manufacturers would be minimal, as described in section V.B below.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule would not have a significant impact on small rural hospitals because the provisions contained in this proposed rule would not pertain to hospitals. Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We anticipate this rule would not impact State governments or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not anticipate this rule would impose direct requirement costs on State governments.

B. Anticipated Effects

1. Effects on Drug Manufacturers

We do not collect information on the costs associated with manufacturer recordkeeping under the Medicaid drug rebate program. Therefore, in the absence of such information, we derived an estimate based on our annual costs of storing electronic pricing data that we receive from approximately 500 drug manufacturers. We store drug product data, including pricing information, for

approximately 55,000 drug products. Over the course of the 12 years the Medicaid drug rebate program has been in existence, we have gathered nearly 250 megabytes of information. This information fits on one compact disc. The cost of one blank compact disc is less than $1. We did not have a reasonable proxy available to estimate the staffing costs associated with maintaining the data, so our estimate does not include these costs.

On the whole, we believe this approach is reasonable because it is our understanding that these records are maintained by most manufacturers in an electronic format, while smaller companies may maintain their pricing records in written format. In order to more accurately evaluate the fiscal impact of this provision, we are requesting that manufacturers provide us with information on the costs they would expect to incur pursuant to retaining records for a 10-year period. To the extent possible, we ask that manufacturers make an effort to distinguish between the cost of meeting the 10-year recordkeeping requirement versus other recordkeeping requirements that may apply to the same records.

We do not anticipate that this rule would adversely affect a drug manufacturer's participation in the Medicaid Drug Rebate program or impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There would be no impact on contractors or providers.

2. Effects on the Medicaid Program

We are unable to quantitatively address the burden to States with respect to recordkeeping. This rule would not adversely affect a State's ability to obtain manufacturers' rebates or impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There would be no impact on Medicaid providers or contractors.

C. Alternatives Considered

Retain the 3-Year Recordkeeping Provision in the August 29, 2003 Final Rule With Comment Period

We considered retaining the 3-year recordkeeping provision in the August 29, 2003 final rule with comment period. However, we believe it is necessary to propose replacing the 3-year provision with a 10-year provision to address concerns raised by commenters regarding Federal and State investigations under the False Claims Act and related anti-fraud provisions.

Propose a Different Time Limitation

Another alternative would be to propose a longer or a shorter recordkeeping requirement. We did not choose a longer recordkeeping timeframe because we believe a 10-year period would offer immediate protection to address situations where investigations are under seal in False Claims Act *qui tam* actions. Further, the exception to the 10-year requirement would adequately address situations where investigations known to manufacturers are not yet resolved. We did not suggest a shorter recordkeeping timeframe in this rule because we are concerned that such a timeframe, should it eventually become effective, could be misconstrued to lead a manufacturer to believe it could prematurely discard vital evidence in a case of fraud against the government.

Finalize the 10-Year Requirement Without Issuing Another Proposed Rule

We considered finalizing the 10-year recordkeeping requirement without issuing another proposed rule. However, we believe that it is important to offer interested parties an opportunity to provide comments about whether a 10-year recordkeeping requirement is the proper timeframe to address the concerns raised on this provision.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV part 447 as set forth below:

PART 447–PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart I–Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

2. In § 447.534, paragraph (h)(2) is removed and paragraph (h)(1) is revised to read as follows:

§ 447.534 Manufacturer reporting requirements.

* * * * *

(h) *Recordkeeping requirements.* (1)(i) A manufacturer must retain records (written or electronic) for 10 years from the date the manufacturer reports that rebate period's data to CMS. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations. The 10-year time frame applies to a manufacturer's quarterly submission of pricing data as well as any revised pricing data subsequently submitted to CMS.

(ii) A manufacturer must retain records beyond the 10-year period if both of the following circumstances exist:

(A) The records are the subject of an audit or of a government investigation related to pricing data that are used in average manufacturer price or best price of which the manufacturer is aware.

(B) The audit findings or investigation related to the average manufacturer price and best price have not been resolved.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 29, 2003.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: December 30, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–32330 Filed 12–31–03; 12:47 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–220–1020–24 1A]

RIN 1004–AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the draft environmental impact statement for Proposed Regulatory Revisions to Grazing Regulations for the Public Lands and announcement of public meetings.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the draft environmental impact statement (Draft EIS) published to support proposed revisions to the regulations governing grazing administration, which were published in the **Federal Register** on December 8, 2003. The analysis provided in the Draft EIS is intended to inform the public of the direct, indirect, and cumulative effects on the human environment of the proposed action and each alternative. BLM will hold 5 public meetings to provide opportunities for the public to ask questions and provide comments about the issues and alternatives considered in the Draft EIS.

DATES: Comments will be accepted until March 2, 2004. BLM may not necessarily consider or include in the final environmental impact statement comments that BLM receives after the close of the comment period or comments submitted in a manner or to an address that differs from those described below. The location, date and time for each of the scheduled meetings on the Draft EIS are given below.

ADDRESSES: You may submit your comments by one of several methods. If you have Internet access, the BLM encourages you to submit your comments using their ''ePlanning'' system. This Draft EIS is a pilot for the ePlanning system and your participation and feedback on this interactive Web-based public comment process would be very helpful to the BLM in developing and improving this system. To access ePlanning, go to *http://www.blm.gov* and follow the directions found at that site. If you do not have Internet access, you may mail your comments to: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: Revisions to Grazing Regulations Draft EIS. You may also deliver your comments by courier or non-U.S. Postal Service overnight mail to: 1620 L Street, NW., Suite 1075, Washington, DC 20036, Attention: Revisions to Grazing Regulations Draft EIS.

Comments, including names and street addresses of respondents, will be available for public review and will be published as part of the final environmental impact statement. Individual respondents may request confidentiality which we will provide to the extent allowed by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. The ePlanning system will not accept your comments unless you indicate whether or not you want your name withheld from publication.

FOR FURTHER INFORMATION CONTACT: Molly S. Brady at (202) 452–7714 for information relating to the Draft EIS or Frank Bruno at (202) 452–0352 for information relating to the rulemaking process. Persons who use a telecommunications device for the deaf (TDD) may contact these individuals through the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background

I. Public Comment Procedures

A limited number of printed copies of the Draft EIS, as well as compact disk versions of the Draft EIS, are available and may be obtained by contacting Molly S. Brady by phone at (202) 452–7714, or by writing to her at the Bureau of Land Management, WO–220 Mail Stop: LS 204, 1849 C Street, NW., Washington, DC 20240.

Your comments on the Draft EIS should:

1. Be specific;
2. Explain the reason for your comments and suggestions;
3. Be about the issues relevant to the Draft EIS or the proposed changes to the grazing regulations; and
4. Where possible, reference the specific section or paragraph in the Draft EIS that you are addressing.

The comments and recommendations that are most useful and likely to influence decisions on the content of a draft environmental impact statement are:

1. Comments and recommendations supported by quantitative information or studies; and
2. Comments that include citations to and analyses of the applicable laws and regulations.

We will hold meetings on the Draft EIS as shown in the table below:

Locations	Date and time	Location	Contact person
Salt Lake City, Utah	Tuesday, January 27, 2004, 6 p.m. to 10 p.m.	Marriott Hotel, 75 South West Temple, Salt Lake City, UT 84101.	Laura Williams (801) 539–4027.
Phoenix, Arizona	Wednesday, January 28, 2004, 6 p.m. to 10 p.m.	Wyndham Phoenix Hotel, 50 East Adams Street, Phoenix, AZ 85004.	Deborah Stevens (602) 417–9215.
Boise, Idaho	Saturday, January 31, 2004, 1 p.m. to 5 p.m.	Doubletree Riverside Hotel, Tamarack Room, 2900 Chinden Boulevard, Boise, ID 83714.	Cheryle Zwang, (203) 373–9215.
Cheyenne, Wyoming	Tuesday, February 3, 2004, 6 p.m. to 10 p.m.	Little America, West America Ballroom, 2800 West Lincoln Way, Cheyenne, WY 82009.	Cindy Wertz (307) 775–6014.
Washington, DC	Thursday, February 5, 2004, 1 p.m. to 5 p.m.	Courtyard by Marriott-Embassy Row, 1600 Rhode Island Avenue, Washington, DC 20036.	Tom Gorey (202) 452–5137.

The sites for the public meetings are accessible to individuals with physical impairments. If you need a special accommodation to participate in one or all of the meetings (*e.g.*, interpreting service, assistive listening device, or

materials in alternative format), please notify the contact person at the location you wish to attend no later than two weeks prior to the scheduled meeting. Although we will attempt to meet all requests received, the requested accommodations may not always be available.

If you plan to present a statement at the meetings, we will ask you to sign in before the meeting starts and identify yourself clearly for the record. Your allotted speaking time at the meeting(s) will be determined before the meeting(s), based upon the number of persons wishing to speak and the approximate time available for the session. You will be provided at least 3 minutes to speak.

If you do not wish to speak at the meetings but you have views, questions, and concerns about either the Draft EIS or the proposed regulations you may submit written statements for inclusion in the public record at the meeting. You may also submit written comments and suggestions regardless of whether you attend or speak at a public meeting. *See* the **ADDRESSES** section of this notice for where to submit comments.

Comments, including names and street addresses of respondents, will be available for public review and will be published as part of the final environmental impact statement. Individual respondents may request confidentiality, which we will provide to the extent allowed by law. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. The Planning system will not accept your comments unless you indicate whether or not you want your name withheld from publication. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

II. Background

On December 8, 2003, BLM published a Notice of Proposed Rule in the **Federal Register** (68 FR 68452). The proposed rule would amend the regulations governing BLM's grazing administration program. This notice announces the availability of the Draft EIS under the National Environmental Policy Act (NEPA).

Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315a-315r), the regulations have been periodically modified, revised, and updated. The last major revision effort culminated when BLM published and implemented comprehensive changes to the grazing regulations in 1995.

The proposed changes to the grazing regulations are intended to improve working relationships with grazing permittees, protect public rangeland health, and enhance administrative efficiency and effectiveness, including resolution of legal issues.

Authority: 40 CFR 1506.6.

Dated: December 29, 2003.

Joseph O. Ratliff,

Acting Assistant Secretary of the Interior.

[FR Doc. 03–32336 Filed 12–31–03; 2:31 pm]

BILLING CODE 4310–84–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7578]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
ILLINOIS				
City of Springfield and the Unincorporated Areas of Sangamon County				
Town Branch	At confluence with Spring Creek	*536	*540	City of Springfield, Sangamon County (Unincorporated Areas).
	At Lincoln Avenue	*538	*540	
Unnamed Tributary I	At confluence with Spring Creek	*543	*548	City of Springfield, Sangamon County (Unincorporated Areas).
	Approximately 5,600 feet upstream of confluence with Spring Creek.	*543	*548	
Unnamed Tributary II	At confluence with Tributary I	*543	*548	City of Springfield, Sangamon country (Unincorporated Areas).
	Approximately 2,000 feet upstream of confluence with Unnamed Tributary I.	*543	*548	
Sangamon County (Unincorporated Areas)				
Maps available for inspection at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.				
Send comments to Mr. Andy Van Meter, Chairman of the Sangamon County Board of Commissioners, 200 South 9th Street, Room 201, Springfield, Illinois 62701.				
City of Springfield:				
Maps available for inspection at the City of Springfield Public Works Department, 300 East Monroe Street, Room 201, Springfield, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.				
Send comments to the Honorable Timothy Davlin, Mayor of the City of Springfield, 800 East Monroe Street, Springfield, Illinois 62701.				
MARYLAND				
Baltimore County (Unincorporated Areas)				
Herbert Run	Approximately 350 feet upstream of confluence with Patapsco River.	*17	*25	Baltimore County upstream of (Unincorporated Areas).
	At confluence East amd West Branch Herbert Run	*46	*39	
East Branch Herbert Run	At confluence with Herbert Run	*46	*39	Baltimore County (Unincorporated Areas).
	Approximately 850 feet upstream of Wilkens Avenue	None	*159	
West Branch Herbert Run	At confluence with Herbert Run	47	*39	Baltimore County (Unincorporated Areas).
	Approximately 0.64 mile upstream of Sulphur Spring Road.	None	119	
Arbutus Run	At confluence with East Branch Herbert Run	*80	*79	Baltimore County (Unincorporated Areas).
	Just downstream of Interstate 695	None	*131	
Baltimore County (Unincorporated Areas)				
Maps available for inspection at the Baltimore County Office Building, Room 307, 111 West Chesapeake Avenue, Towson, Maryland.				
Send comments to Mr. James T. Smith, Jr., Baltimore County Executive, 400 Washington Avenue, Old Courthouse Mezzanine, Towson, Maryland 21204.				
St. Mary's County				
Back Creek	Approximately 0.62 mile upstream of confluence with Cuckold Creek.	None	•6	St. Mary's County (Unincorporated Areas).
	Approximately 1.25 miles upstream of confluence with Cuckold Creek.	None	•22	
Blake Creek	Approximately 1.14 miles upstream of confluence with Potomac River.	•4	•5	St. Mary's County (Unincorporated Areas).
	Approximately 1.70 miles upstream of confluence with Potomac River.	None	•13	

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Broad Run	At the confluence with Brooks Run	None	•82	St. Mary's County (Unincorporated Areas).
	Approximately 0.17 mile upstream of confluence with Brooks Run.	None	•82	
Brooks Run	At the confluence with McIntosh Run	None	•43	St. Mary's County (unincorporated areas).
	Approximately 1.24 miles upstream of confluence with McIntosh Run.	None	•83	
Budds Creek	Approximately 0.5 mile upstream of confluence with Wicomico River.	•5	•6	St. Mary's County (Unincorporated Areas).
	Approximately 1.1 miles upstream of State Route 234	None	•64	
Budds Creek Tributary 1	At the confluence with Budds Creek	None	•15	St. Mary's County (Unincorporated Areas.
	Approximately 0.5 mile upstream of the confluence with Budds Creek.	None	•25	
Bull Run	Approximately 0.19 mile upstream of confluence with Chapico Creek.	•5	•6	St. Mary's County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Manor Road	None	•49	
Burnt Mill Creek	Approximately 750 feet upstream of confluence with McIntosh Run.	None	•33	St. Mary's County (Unincorporated Areas).
	At confluence of Burnt Mill Creek Tributary	None	•88	
Burnt Mill Creek Tributary	At confluence with Burnt Mill Creek	None	•88	St. Mary's County (Unincorporated Areas).
	Approximately 0.36 mile upstream of confluence with Burnt Mill Creek.	None	•96	
Burroughs Run	At confluence with Bull Run	None	•10	St. Mary's County (Unincorporated Areas).
	Approximately 0.37 mile upstream of confluence with Bull Run.	None	•17	
Canoe Neck Creek Tributary	Approximately 0.24 mile upstream of Canoe Neck Creek	•5	•6	St. Mary's County (Unincorporated Areas).
	Approximately 0.94 mile upstream of confluence with Canoe Neck Creek.	None	•21	
Carthagena Creek	Approximately 0.86 mile downstream of Drayden Road	•4	•5	St. Mary's County (Unincorporated Areas).
	Approximately 1,680 feet upstream of Drayden Road	None	•27	
Cat Creek	Approximately 0.79 mile upstream of confluence with Patuxent River.	•6	•7	St. Mary's County (Unincorporated Areas).
	Approximately 1.85 miles upstream of confluence with Patuxent River.	None	•24	
Chaptico Creek (Downstream Portion).	Approximately 2,243 feet upstream of the confluence with Bull Run.	•5	•6	St. Mary's County (Unincorporated Areas).
	At confluence with Nelsons Run	•5	•6	
Chaptico Creek (Upstream Portion).	Approximately 400 feet downstream of confluence with Lacy Run.	•56	•55	St. Mary's County (Unincorporated Areas).
	Approximately 3.1 miles upstream of confluence of Lacy Run.	None	•177	
Church Creek	Approximately 850 feet downstream of State Route 5	•4	•5	St. Mary's County (Unincorporated Areas).
	Approximately 1,585 feet upstream of State Route 5	None	•16	
Church Creek Tributary	At confluence with Church Creek	None	•14	St. Mary's County (Unincorporated Areas).
	Approximately 1,160 feet upstream of the confluence with Church Creek.	None	•16	
Coatigan Run	Approximately 0.66 mile upstream of confluence with Patuxent River.	•6	•7	St. Mary's County (Unincorporated Areas).
	Approximately 2.04 miles upstream of confluence with Patuxent River.	None	•29	
Coffee Hill Run	Approximately 1.03 miles upstream of confluence with Chaptico Creek.	None	•28	St. Mary's County (Unincorporated Areas).
	Approximately 0.47 mile upstream of Bethel Church Road.	None	•86	
Cuckold Creek	Approximately 1.17 miles upstream of confluence with Forrest Landing Cove.	None	•6	St. Mary's County (Unincorporated Areas).
	Approximately 1.44 miles upstream of confluence with Forrest Landing Cove.	None	•12	
Cuckold Creek Tributary 1	Approximately 0.6 mile downstream of Sotterley Road	None	•6	St. Mary's County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.47 mile upstream of Sotterley Road	None	•24	
Cuckold Creek Tributary 2	At confluence with Cuckold Creek Tributary 1	None	•15	St. Mary's County (Unincorporated Areas).
	Approximately 600 feet upstream of confluence with Cuckold Creek Tributary 1.	None	•16	
Cuckold Creek Tributary 3	At confluence with Cuckold Creek Tributary 1	None	•17	St. Mary's County (Unincorporated Areas).
	Approximately 0.43 mile upstream of confluence with Cuckold Creek Tributary 1.	None	•26	
Dynard Run	Approximately 800 feet downstream of Colton Point Road.	•5	•6	St. Mary's County (Unincorporated Areas).
	Approximately 1.03 miles upstream of Colton Point Road	None	•37	
Eastern Branch	Approximately 400 feet upstream of confluence with Hilton Run.	•4	•5	St. Mary's County (Unincorporated Areas).
	Approximately 1.7 miles upstream of confluence with Pembrook Run.	None	•51	
Fisherman Creek	Approximately 595 feet upstream of Saint Mary's River ...	• 4	• 5	St. Mary's County (Unincorporated Areas).
	Approximately 1.32 miles upstream of State Route 5	None	• 20	
Fisherman Creek Tributary ...	At confluence with Fisherman Creek	None	• 10	St. Mary's County (Unincorporated Areas).
	Approximately 0.40 mile upstream of confluence with Fisherman Creek.	None	• 18	
Forrest Hall Branch	Approximately 0.84 mile upstream of confluence with Hayden Run.	None	• 50	St. Mary's County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Foley Mattingly Road.	None	• 98	
Glebe Run	Approximately 1,470 feet downstream of State Route 5 ..	• 5	• 6	St. Mary's County (Unincorporated Areas).
	Approximately 1.25 miles upstream of State Route 5	None	• 40	
Gravely Run	At the confluence with Glebe Run	None	• 20	St. Mary's County (Unincorporated Areas).
	Approximately 1.15 miles upstream of State Route 471 ...	None	• 57	
Greenhill Run	Upstream of Maypole Road	None	• 19	St. Mary's County (Unincorporated Areas).
	Approximately 0.45 mile upstream of Maypole Road	None	• 37	
Hayden Run	Approximately 400 feet upstream of confluence with Forrest Hall Branch.	None	• 39	St. Mary's County (Unincorporated Areas).
	Approximately 2.75 miles upstream of confluence with Forrest Hall Branch.	None	• 90	
Herring Creek	Approximately 1.1 miles downstream of Beauvue Road ..	• 4	• 8	St. Mary's County (Unincorporated Areas).
	Approximately 0.44 mile upstream of Beauvue Road	None	• 22	
Horse Landing Creek	Approximately 0.31 mile upstream of confluence with Patuxent River.	• 6	• 7	St. Mary's County (Unincorporated Areas).
	Approximately 1.85 miles upstream of confluence with Patuxent River.	None	• 34	
Indian Creek	At confluence with Unnamed Creek 1	None	• 6	St. Mary's County (Unincorporated Areas).
	Approximately 3.6 miles upstream of confluence with Unnamed Creek 1.	None	• 94	
Indiantown Creek	Approximately 950 feet upstream of confluence with Chaptico Bay.	None	• 5	St. Mary's County (Unincorporated Areas).
	Approximately 0.93 mile upstream of confluence with Chaptico Bay.	None	• 27	
Johns Creek	Approximately 1,200 feet upstream of confluence with St. Mary's River.	None	• 16	St. Mary's County Unincorporated Areas).
	Approximately 0.89 mile upstream of State Route 249	None	• 71	
Killpeck Creek	Approximately 400 feet upstream of confluence of Lockes Swamp Creek.	None	• 6	St. Mary's County (Unincorporated Areas).
	Approximately 4.04 miles upstream of confluence with Lockes Swamp Creek.	None	• 90	
Lacy Run	At confluence with Chaptico Creek	None	• 57	St. Mary's County (Unincorporated Areas).
	Approximately 1.19 miles upstream of confluence with Chaptico Creek.	None	• 91	
Lockes Swamp Creek	Approximately 0.31 mile upstream of confluence with Killpeck Creek.	• 6	• 7	St. Mary's County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 4.43 miles upstream of confluence with Killpeck Creek.	None	• 95	
Locust Run	At confluence with St. Clements Creek	None	• 37	St. Mary's County (Unincorporated Areas).
	Approximately 1.31 miles upstream of confluence with St. Clements Creek.	None	• 63	
Lows Run	At the confluence with Brooks Run	None	• 65	St. Mary's County (Unincorporated Areas).
	Approximately 0.4 mile upstream of St. Johns Road	None	• 83	
McIntosh Run	Approximately 0.55 mile downstream of Pleasant Valley Avenue.	None	• 39	St. Mary's County (Unincorporated Areas).
	Approximately 0.91 mile upstream of Secretariat Drive	None	• 83	
Miski Run	Approximately 0.2 mile upstream of confluence with McIntosh Run.	None	• 28	St. Mary's County (Unincorporated Areas).
	Approximately 0.59 mile upstream of Maypole Road	None	• 88	
Moll Dyers	Approximately 0.46 mile downstream of State Route 244	• 5	• 6	St. Mary's County (Unincorporated Areas).
	Approximately 0.64 mile upstream of State Route 5	None	• 55	
Nelson Run	Approximately 520 feet upstream of confluence with McIntosh Run.	• 9	• 10	St. Mary's County (Unincorporated Areas).
	Approximately 2.1 miles upstream of confluence with McIntosh Run.	None	• 63	
Nelson's Run	At confluence with Chaptico Creek	• 5	• 6	St. Mary's County (Unincorporated Areas).
	Approximately 1.39 miles upstream of confluence with Chaptico Creek.	None	• 47	
Pembrook Run	At confluence with Eastern Branch	None	•19	St. Mary's County (Unincorporated Areas).
	Approximately 1.55 miles upstream of confluence with Eastern Branch.	None	• 55	
Persimmon Creek	Approximately 0.41 mile downstream of New Market Turner Road.	•6	•7	St. Mary's County (Unincorporated Areas).
	Approximately 0.4 mile upstream of confluence of Persimmon Creek Tributary 1.	None	•54	
Persimmon Creek Tributary 1	At confluence with Persimmon Creek. Approximately 0.96 mile upstream of confluence with Persimmon Creek.	None	•18	St. Mary's County (Unincorporated Areas).
Pine Hill Run	Approximately 0.22 mile upstream of confluence with Chesapeake Bay.	•4	•5	St. Mary's County (Unincorporated Areas).
	Approximately 0.88 mile upstream of confluence with Chesapeake Bay.	•4	•8	
Poplar Hill Creek	Approximately 500 feet downstream of Tower Hill Road	•6	•7	St. Mary's County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Medleys Creek Road	None	•37	
Rich Neck Creek	At confluence with Burnt Mill Creek	None	•42	St. Mary's County (Unincorporated Areas).
	Approximately 1.47 miles upstream of confluence with Burnt Mill Creek.	None	•71	
Saint Clements Creek	Approximately 350 feet upstream of confluence of Dynard Run.	•5	•6	St. Mary's County (Unincorporated Areas).
	Approximately 1.3 miles upstream of confluence of St. Clements Creek Tributary 1.	None	•82	
Saint Clements Creek Tributary 1.	At confluence with St. Clements Creek	None	•60	St. Mary's County (Unincorporated Areas).
	Approximately 2.3 miles upstream of confluence with St. Clements Creek.	None	•85	
Saint Clements Creek Tributary 2.	At confluence with St. Clements Creek	None	•27	St. Mary's County (Unincorporated Areas).
	Approximately 0.84 mile upstream of confluence with St. Clements Creek.	None	•46	
St. Inigoes Creek	Approximately 80 feet upstream of State Route 5	None	•6	St. Mary's County (Unincorporated Areas).
	Approximately 0.49 mile upstream of State Route 5	None	•14	
St. Mary's River	Approximately 950 feet upstream of confluence with Jarboesville Run.	•28	•29	St. Mary's County (Unincorporated Areas).
	Approximately 0.98 mile upstream of State Route 4	None	•95	
St. Mary's River Tributary 1	At confluence with St. Mary's River	None	•51	St. Mary's County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.22 miles upstream of confluence with St. Mary's River.	None	•70	
St. Mary's River Tributary 2 ..	At confluence with St. Mary's River Tributary 1	None	•53	St. Mary's County (Unincorporated Areas).
	Approximately 0.26 mile upstream of confluence with St. Mary's River Tributary 1.	None	•70	
St. Mary's River Tributary 3 ..	At confluence with St. Mary's River Tributary 1	None	•65	St. Mary's County (Unincorporated Areas).
	Approximately 0.27 mile upstream of confluence with St. Mary's River Tributary 1.	None	•71	
St. Thomas Creek	Approximately 1.1 miles upstream of confluence with Patuxent River.	None	•5	St. Mary's County (Unincorporated Areas).
	Approximately 1.5 miles upstream of confluence with Patuxent River.	None	•9	
Tom Swamp Run	At confluence with Rich Neck Creek	None	•45	St. Mary's County (Unincorporated Areas).
	Approximately 2.35 miles upstream of confluence with Rich Neck Creek.	None	•85	
Tomakokin Creek	Approximately 0.32 mile downstream of SR 470	•5	•6	St. Mary's County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Bushwood Road	None	•52	
Town Run	At confluence with Brenton Bay	None	•5	St. Mary's County (Unincorporated Areas), Town of Leonardtown.
	Approximately 1.8 miles upstream of Leonardtown Point Lookout Road.	None	•79	
Unnamed Creek 1	At confluence with Indian Creek	None	•6	St. Mary's County (Unincorporated Areas).
	Approximately 2.3 miles upstream of confluence with Indian Creek.	None	•64	
Unnamed Creek 2	Approximately 0.58 mile upstream of confluence with Patuxent River.	•6	•7	St. Mary's County (Unincorporated Areas).
	Approximately 1.57 miles upstream of confluence with Patuxent River.	None	•22	
Unnamed Tributary to St. Clements Bay.	Approximately 0.35 mile upstream of confluence with St. Clements Bay.	•5	•6	St. Mary's County (Unincorporated Areas).
	Approximately 1.23 miles upstream of confluence with St. Clements Bay.	None	•32	
Warehouse Run	Approximately 600 feet downstream of Flat Iron Road	•5	•8	St. Mary's County (Unincorporated Areas).
	Approximately 0.60 mile upstream of Flat Iron Road	None	•28	
Western Branch	Approximately 970 feet upstream of confluence with St. Mary's River.	•24	•25	St. Mary's County (Unincorporated Areas).
	Approximately 2.27 miles upstream of confluence of Western Branch Tributary 3.	None	•94	
Western Branch Tributary 1 ..	At the confluence with Western Branch	None	• 58	St. Mary's County (Unincorporated Areas).
	Approximately 1.1 miles upstream of confluence with Western Branch.	None	• 68	
Western Branch Tributary 2 ..	At the confluence with Western Branch	None	• 70	St. Mary's County (Unincorporated Areas).
	Approximately 0.49 mile upstream of confluence with Western Branch.	None	• 70	
Western Branch Tributary 3.	At the confluence with Western Branch	None	• 71	St. Mary's County (Unincorporated Areas).
	Approximately 0.37 mile upstream of the confluence with Western Branch.	None	• 71	St. Mary's County (Unincorporated Areas).
White Neck Creek Tributary	Approximately 1,000 feet downstream of Jack Gibson Road.	• 5	•6	St. Mary's County (Unincorporated Areas).
	At Colton Point Road	None	• 12	

St. Mary's County (Unincorporated Areas)

Maps available for inspection at the St. Mary's County Office of Land Use and Growth Management, 23150 Leonard Hall Drive, Leonardtown, Maryland.

Send comments to Mr. Thomas F. McKay, President of the St. Mary's County Board of Commissioners, P.O. Box 653, 23115 Leonard Hall Drive, Leonardtown, Maryland 20650.

Town of Leonardtown

Maps available for inspection at the Leonardtown Town Hall, 41675 Park Avenue, Leonardtown, Maryland.

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Send comments to the Honorable J. Harry Norris, III, Mayor of the Town of Leonardtown, P.O. Box 1, Leonardtown, Maryland 20650.				
NEW HAMPSHIRE Rockingham County				
Exeter River	Approximately 850 feet northeast of the intersection of Great Oak and Pheasant Run Drive at the corporate limits of the Town of Chester and the Town of Raymond.	None	*165	Town of Chester.
Powwow Pond	North of Boston and Maine Railroad	None	*119	Town of East Kingston.
	South of Boston and Maine Railroad	None	*118	
Lamprey River	Approximately 950 feet downstream of Prescott Road	*163	*164	Town of Epping.
	Approximately 300 feet of upstream of Prescott Road	None	*167	
Piscassic River	Approximately 0.57 mile downstream of upstream corporate limits.	None	*105	Town of Exeter.
	At upstream corporate limits	None	*108	
Piscataqua River	North of State Route 18 (East of Pierce Island)	*11	*9	Town of New Castle.
Country Pond	Entire shoreline within community	None	*121	Town of Newton.
Little River No. 3	At upstream corporate limits	None	*103	Town of Newton.
	At downstream corporate limits	None	*103	
Flatrock Branch	Approximately 150 feet downstream	None	*163	Town of Salem.
	At confluence with Shadow Lake	None	*162	
Squamscott River	At downstream side of Boston and Maine Railroad bridge	*8	*7	Town of Stratham.
	At downstream corporate limits	*8	*7	
Lamprey River	Approximately 1.3 miles upstream of Alternate Route 101	None	*217	Town of Candia.
	Approximately 1.77 miles upstream of Alternate Route 101.	None	*217	
Great Bay/Little Bay	Entire shoreline within the community	None	*7	Town of Newington.
Piscataqua River	From the Spaulding Turnpike bridge to the Greenland/Portsmouth corporate limits.	None	*9	Town of Newington.
Pickering Brook	At the Greenland/Portsmouth corporate limits	None	*27	City of Portsmouth.
	Approximately 2,300 feet upstream of Greenland/Portsmouth corporate limits.	None	*27	

Town of Candia:
Maps available for inspection at the Candia Town Office, 74 High Street, Candia, New Hamsphire.
Send comments to Mr. Clark Thyng, Chairman of the Town of Candia Board of Selectmen, Town Office, 74 High Street, Candia New Hampshire 030334–2751.

Town of Chester:
Maps available for inspection at the Town of Chester Municipal Office Building, 84 Chester Street, Chester, New Hampshire.
Send comments to Mr. Geoffrey Barnett, Chairman of the Town of Chester Board of Selectmen, P.O. Box 275, Chester, New Hampshire 03036.

Town of East Kingston:
Maps available for inspection at the East Kingston Town Office, 24 Depot Road, East Kingston, New Hampshire.
Send comments to Mr. Raymond R. Donald, Chairman of the Town of East Kingston Board of Selectmen, Town Office, 24 Depot Road, East Kingston, New Hampshire 03827.

Maps Available for inspection at the Epping Town Hall, 157 Main Street, Epping, New Hampshire.
Send comments to Mr. Tom Gauthier, Chairman of the Town of Epping Board of Selectmen, Town Hall, 157 Main Street, Epping, New Hampshire 03042.

Town of Exeter:
Maps available for inspection at the Exeter Town Office, 10 Front Street, Exeter, New Hampshire.
Send comments to Mr. Paul Binette, Chairman of the Town of Exeter Board of Selectmen, Town Office Building, 10 Front Street, Exeter, New Hampshire 03833.

Town of Newington:
Maps available for inspection at the Newington Town Office, 205 Nimble Hill Road, Newington, New Hampshire.
Send comments to Mr. Jack O'Reilly, Chairman of the Town of Newington Board of Selectmen, 205 Nimble Hill Road, Newington, New Hampshire 03801.

Town of Newton:
Maps available for inspection at the Newton Town Hall, Town Hall Road, Newton, New Hampshire.
Send comments to Mr. Stephen Cushing, Chairman of the Town of Newtown Board of Selectmen, P.O. Box 378, Newton, New Hampshire 03858.

City of Portsmouth:
Maps available for inspection at the City of Portsmouth Municipal Complex, Planning Department, 3rd Floor, 1 Junkins Avenue, Portsmouth, New Hampshire.
Send comments to Mr. John P. Bohenko, Portsmouth City Manager, 1 Junkins Avenue, Portsmouth, New Hampshire 03801.

Town of New Castle:
Maps available for inspection at the New Castle Town Office, 49 Main Street, New Castle, New Hampshire.
Send comments to Mr. Robert W. Beecher, Chairman of the Town of New Castle Board of Selectmen, Town Hall, P.O. Box 367, New Castle, New Hampshire 03854.

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Town of Salem: Maps available for inspection at the Salem Town Office, 33 Geremonty Drive, Salem, New Hampshire. Send comments to Ms. Marcia Leighninger, Salem Town Manager, 33 Geremonty Drive, Salem, New Hampshire 03079.				
NORTH CAROLINA Brunswick County				
Alligator Swamp	At confluence with Juniper Creek	None	• 39	Brunswick County (Unincorporated Areas).
	Approximately 3.7 miles upstream of Alligator Road Northwest.	None	• 57	
Bay Branch	At confluence with Alligator Swamp	None	• 43	Brunswick County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Exum Road Northwest.	None	• 50	
Bear Branch	At confluence with Waccamaw River	None	• 31	Brunswick County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Project Road Northwest.	None	• 57	
Bear Pen Island Swamp	At confluence with Juniper Creek	None	• 45	Brunswick County (Unincorporated Areas).
	At downstream side of Green Swamp Road Northwest	None	• 61	
Beaverdam Swamp	At confluence with Royal Oak Swamp	None	• 12	Brunswick County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Landfill Road Northwest.	None	• 35	
Beaverdam Swamp Tributary	At confluence with Beaverdam Swamp	None	• 12	Brunswick County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Middle River Road Northeast.	None	• 40	
Bell Swamp	At confluence with Alligator Swamp	None	• 40	Brunswick County (Unincorporated Areas).
	Approximately 700 feet upstream of Myrtlehead Road Northwest.	None	• 41	
Big Bay Branch	At confluence with Middle Swamp	None	• 25	Brunswick County (Unincorporated Areas), Town of Bolivia.
	Approximately 2,000 feet upstream of Danford Road Southeast.	None	• 43	
Big Bay Branch Tributary	At confluence with Big Bay Branch	None	• 28	Brunswick County (Unincorporated Areas), Town of Bolivia.
	Approximately 1,600 feet upstream of Old Ocean Highway.	None	• 47	
Boggy Branch	At confluence with Red Run	None	• 30	Brunswick County (Unincorporated Areas).
	Approximately 1.5 miles upstream of confluence with Red Run.	None	• 46	
Camp Branch (into Alligator Swamp).	At confluence with Alligator Swamp	None	• 40	Brunswick County (Unincorporated Areas).
	Approximately 1,300 feet upstream of Myrtlehead Road Northwest.	None	• 41	
Camp Branch (into Honey Island Swamp).	At confluence with Honey Island Swamp	None	• 54	Brunswick County (Unincorporated Areas).
	Approximately 2,100 feet upstream of Camp Branch Road Northwest.	None	• 59	
Cawcaw Swamp	At confluence with Waccamaw River	None	• 26	Brunswick County (Unincorporated Areas).
	Approximately 3.5 miles upstream of Russtown Road Northwest.	None	• 62	
Clark Branch	At confluence with Lockwoods Folly River	• 11	• 9	Brunswick County (Unincorporated Areas).
	Approximately 500 feet upstream of U.S. Highway 17 Bypass.	None	• 25	
Fall Swamp	At confluence with Royal Oak Swamp	None	• 17	Brunswick County.
	Approximately 0.9 mile upstream of Makatoka Road Northwest.	None	• 55	(Unincorporated Areas).
Honey Island Swamp	At confluence with Juniper Creek	None	• 43	Brunswick County.

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.3 miles upstream of Green Swamp Road Northwest.	None	• 59	(Unincorporated Areas).
Juniper Creek	At confluence with Waccamaw River	None	• 35	Brunswick County.
	Approximately 1,400 feet upstream of Camp Branch Road Northwest.	None	• 45	
Leonard Branch	At confluence with Juniper Creek	None	• 43	Brunswick County.
	Approximately 0.6 mile upstream of Exum Road Northwest.	None	• 45	(Unincorporated Areas).
Little Cawcaw Swamp	At confluence with Cawcaw Swamp	None	• 28	Brunswick County.
	Approximately 2,200 feet upstream of U.S. Highway 17	None	• 34	(Unincorporated Areas), Town of Carolina Shores.
Little Saucepan Creek	At confluence with Saucepan Creek	None	• 12	Brunswick County.
	Approximately 0.3 mile upstream of Pigott Road Southwest.	None	• 12	(Unincorporated Areas).
Middle River	At confluence with Fall Swamp	None	• 19	Brunswick County.
	Approximately 1.8 miles upstream of Little Macedonia Road Northwest.	None	• 48	(Unincorporated Areas).
Middle Swamp	At confluence with Midway Branch	• 14	• 12	Brunswick County.
	Approximately 0.7 mile upstream of Green Lewis Road Southeast.	None	•41	(Unincorporated Areas), Town of Bolivia
Middle Swamp Tributary	At confluence with Middle Swamp	None	•24	Brunswick County.
	Approximately 0.6 mile upstream of Knox Street	None	•44	(Unincorporated Areas), Town of Bolivia.
Mill Branch into Juniper Creek.	At confluence with Juniper Creek	None	•37	Brunswick County.
	Approximately 0.5 mile upstream of Myrtlehead Road Northwest.	None	•40	(Unincorporated Areas).
Mill Branch into Wet Ash Swamp.	At confluence with Wet Ash Swamp	None	•40	Brunswick County.
	Approximately 0.8 mile upstream of Big Neck Road Northwest.	None	•57	(Unincorporated Areas).
Muddy Branch	At confluence with Juniper Creek	None	•45	Brunswick County.
	Approximately 1.0 mile upstream of Makatoka Road Northwest.	None	•49	(Unincorporated Areas).
Mulberry Branch	Approximately 1,500 feet upstream of North Mulberry Road Northwest.	•19	•18	Brunswick County (Unincorporated Areas) Town of Shallotte.
	Approximately 1.2 miles upstream of Mulberry Road Northwest.	None	•30	
Read Branch	At confluence with Mill Branch	None	•37	Brunswick County.
	Approximately 1.6 miles upstream of Myrtlehead Road Northwest.	None	•41	(Unincorporated Areas).
Red Run	Approximately 100 feet downstream of Galloway Road Northeast.	None	•30	Brunswick County.
	Approximately 1.0 mile upstream of Galloway Road Northeast.	None	•38	
River Swamp	At confluence with Midway Branch	None	•23	Brunswick County.
	Approximately 2.0 miles upstream of confluence with Midway Branch.	None	•43	(Unincorporated Areas).
Royal Oak Swamp	Approximately 150 feet downstream of U.S. Highway 17 Bypass.	None	•9	Brunswick County, (Unincorporated Areas).
	Approximately 1.2 miles upstream of Royal Oak Road Northwest.	None	•46	
Scippio Swamp	At confluence with Waccamaw River	None	•27	Brunswick County.
	Approximately 0.5 mile upstream of Russtown Road Northwest.	None	•45	
South Prong Wet Ash Swamp.	At confluence with Wet Ash Swamp	None	•40	Brunswick County.
	Approximately 1.1 miles upstream of Big Neck Road	None	•56	(Unincorporated Areas).
Wet Ash Swamp	At confluence with Waccamaw River	None	•30	Brunswick County.
	Approximately 0.8 mile upstream of NC Highway 130	None	•40	(Unincorporated Areas).
Waccamaw River	At State boundary	None	•25	Brunswick County.
	At confluence with Juniper Creek	None	•35	(Unincorporated Areas).
Midway Branch	At confluence with Lockwoods Folly River	•14	•12	Brunswick County, (Unincorporated Areas).
	Approximately 3.7 miles upstream of Midway Road Southeast.	None	•45	

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Calabash River	Approximately 1.0 mile upstream of confluence of Calabash Creek.	None	•12	Brunswick County, (Unincorporated Areas), Town of Sunset Beach.
	Approximately 2.1 miles upstream of confluence of Calabash Creek.	None	•16	
Calabash River Tributary	At confluence with Calabash River	None	•12	Brunswick County.
	Approximately 1,300 feet upstream of Rice Mill Circle Southwest.	None	•17	(Unincorporated Areas), Town of Sunset Beach.
Doe Creek	Approximately 0.2 mile upstream of the confluence of Polly Swain Branch.	None	•13	Brunswick County, (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence of Polly Swain Branch.	None	•19	
Goose Creek	Approximately 1,200 feet downstream of Bricklanding Road Southwest.	None	•12	Brunswick County (Unincorporated Areas).
	Approximately 500 feet upstream of Landing Boulevard Southwest.	None	•17	
Jinnys Branch	Approximately 8,000 feet downstream of Bricklanding Road Southwest.	None	•12	Brunswick County (Unincorporated Areas).
	Approximately 0.6 mile downstream of Stone's Throw Drive Southwest.	None	•26	
Lockwoods Folly River	At the confluence of Nucitt Branch	None	•42	Brunswick County (Unincorporated Areas).
	At the confluence of Red Run/Pinch Gut Creek	None	•26	
Mercers Mill Pond	At confluence with Mill Creek	None	•11	Brunswick County (Unincorporated Areas).
	Approximately 1.1 miles downstream of Southport Supply Road Southeast.	None	•19	
Nucitt Branch	At confluence with Lockwoods Folly River	•10	•9	Brunswick County (Unincorporated Areas).
	Approximately 3,700 feet downstream of Clemmons Road Southeast.	None	•18	
Pamlico Creek	Approximately 0.5 mile upstream of confluence with Lockwoods Folly River.	None	•10	Brunswick County (Unincorporated Areas).
	Approximately 200 feet downstream of Stanley Road Southwest.	None	•19	
Shallotte River	Approximately 1,900 feet upstream of U.S. Highway 17	None	•12	Brunswick County (Unincorporated Areas), Town of Shallotte.
	Approximately 2.3 miles upstream of Ocean Isle Beach Road Southwest.	None	•26	
Scott Branch	At the downstream side of Old Lennon Road Southeast	None	•9	Brunswick County (Unincorporated Areas).
	Approximately 100 feet downstream of Southport Supply Road Southeast.	None	•15	
Sharron Creek	Approximately 0.7 mile upstream of Gray Bridge Road Southwest.	None	•10	Brunswick County (Unincorporated Areas).
	Approximately 400 feet downstream of Holden Beach Road Southwest.	None	•10	
The Mill Pond	Approximately 50 downstream of Copas Road Southwest	None	•11	Brunswick County (Unincorporated Areas).
	At Village Point Road Southwest	None	•22	
Williams Branch	Approximately 150 feet downstream of Holden Beach Road Southwest.	None	•10	Brunswick County (Unincorporated Areas).
	Approximately 100 feet upstream of Lula Trail Southwest	None	•21	
Pinch Gut Creek	At the confluence with Lockwoods Folly River	•25	•26	Brunswick County (Unincorporated Areas).
	Approximately 0.2 mile upstream of the confluence with Lockwoods Folly River.	•25	•26	
Atlantic Ocean	Approximately 1,000 feet southeast of the intersection of Heritage Drive Southwest and NC–179.	•13	•14	Brunswick County (Unincorporated Areas), Towns of Sunset Beach, Ocean Isle Beach, Holden Beach.
	Approximately 200 feet south of the intersection of Goldsboro Street and 1st Street.	•20	•21	

Brunswick County (Unincorporated Areas)

Maps available for inspection at the Brunswick County (Unincorporated Areas) Planning Department, 20 Referendum Drive, Bolivia, North Carolina.

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Send comments to Mr. Marty Lawing, Brunswick County (Unincorporated Areas) Manager, P.O. Box 249, Bolivia, North Carolina 28422–0249.

Town of Bolivia

Maps available for inspection at the Bolivia Town Hall, U.S. Highway 17 Business East, Bolivia, North Carolina.

Send comments to The Honorable Dewey Smith, Mayor of the Town of Bolivia, P.O. Box 93, Bolivia, North Carolina 28422–0864.

Town of Carolina Shores

Maps available for inspection at the Carolina Shores Town Hall, 200 Persimmon Road, Carolina Shores, North Carolina.

Send comments to The Honorable Daniel A. Mann, Mayor of the Town of Carolina Shores, P.O. Box 4038, Carolina Shores, North Carolina 28467–4038.

Town of Holden Beach

Maps available for inspection at the Holden Beach Town Hall, 110 Rothschild Street, Holden Beach, North Carolina.

Send comments to The Honorable Norman Meares, Mayor of the Town of Holden Beach, 110 Rothschild Street, Holden Beach, North Carolina 28462.

Town of Ocean Isle Beach

Maps available for inspection at the Ocean Isle Beach Town Hall, 3 West Third Street, Ocean Isle Beach, North Carolina.

Send comments to The Honorable Debbie Smith, Mayor of the Town of Ocean Isle Beach, 3 West Third Street, Ocean Isle Beach, North Carolina 28469.

Maps available for inspection at the Shallotte Town Hall, 110 Cheers Street, Shallotte, North Carolina.

Send comments to The Honorable Gerald L. Long, Mayor of the Town of Shallotte, P.O. Box 2287, Shallotte, North Carolina 28459–2287.

Town of Sunset Beach

Maps available for inspection at the Sunset Beach Town Hall, 700 Sunset Boulevard—North, Sunset Beach, North Carolina.

Send comments to the Honorable Cherri Cheek, Mayor of the Town of Sunset Beach, 700 Sunset Boulevard—North, Sunset Beach, North Carolina 28468.

NORTH CAROLINA
Chowan County

Burnt Mill Creek	At a point just upstream of Burnt Mill Road	None	•6	Chowan County (Unincorporated Areas).
	Approximately 1,000 feet upstream of U.S. Highway 17	None	•13	
Goodwin Mill Creek	Approximately 1.7 miles upstream of Center Hill Road	None	•14	Chowan County (Unincorporated Areas).
	At Center Hill Road	None	•14	

Chowan County (Unincorporated Areas)

Maps available for inspection at the Chowan County Land Records Office, South Broad Street, Edenton, North Carolina.

Send comments to Mr. Luther C. Copeland, Jr., Chowan County Manager, P.O. Box 1030, Edenton, North Carolina 27932.

NORTH CAROLINA
Perquimans County

Bethel Creek	At Burnt Mill Road	None	•6	Perquimans County (Unincorporated Areas).
	Approximately 1.0 mile upstream of U.S. Highway 13	None	•11	
Burnt Mill Creek	At the upstream side of Burnt Mill Road	None	•6	Perquimans County (Unincorporated Areas).
	Approximately 1,000 feet upstream of U.S. Highway 17	None	•13	
Burnt Mill Creek Tributary 1	At the confluence with Burnt Mill Creek	None	•6	Perquimans County (Unincorporated Areas).
	Approximately 0.6 mile upstream of U.S. Highway 17	None	•13	
Burnt Mill Creek Tributary 1A	At confluence with Burnt Mill Creek Tributary 1	None	•6	Perquimans County (Unincorporated Areas).
	Approximately 0.7 mile upstream of U.S. Highway 17	None	•17	
Goodwin Mill Creek	At Beach Springs Road	None	•6	Perquimans County (Unincorporated Areas).
	Approximately 0.4 mile upstream of North Bear Swamp Road.	None	•15	
Goodwin Mill Creek Tributary 1.	At Goodwin Mill Road	None	•6	Perquimans County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Goodwin Mill Road	None	•12	
Goodwin Mill Creek Tributary 2.	At confluence with Goodwin Mill Creek	None	•12	Perquimans County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Center Hill Highway	None	•15	
Little River	Approximately 1.5 miles upstream of U.S. Highway 17	None	•9	Perquimans County (Unincorporated Areas).
	Approximately 600 feet downstream of Sandy Road	None	•10	
Mill Creek	Approximately 400 feet downstream of Lake Road	•6	•7	Town of Winfall, Perquimans County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.3 mile downstream of Four Mile Desert Road.	None	•11	
Mill Creek Tributary 1	At the confluence with Mill Creek	None	•9	Perquimans County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Swing Gate Road	None	•12	
Mill Creek Tributary 2	At the confluence with Mill Creek	None	•10	Perquimans County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Swing Gate Road	None	•14	
Perquimans River	Approximately 2.6 miles downstream of Gates County boundary.	None	•11	Perquimans County (Unincorporated Areas).
	Approximately 150 feet downstream of Gates County boundary.	None	•11	
Perquimans River Tributary 2	Approximately 0.3 mile upstream of the confluence with Perquimans River.	None	•6	Town of Hertford, Perquimans County (Unincorporated Areas).
	Approximately 850 feet upstream of Layden Road	None	•10	
Sutton Creek	Approximately 1,000 feet downstream of the confluence with Sutton Creek Tributary 3.	None	•6	Perquimans County (Unincorporated Areas).
	Approximately 1,000 feet upstream of U.S. Highway 17	None	•13	
Sutton Creek Tributary 3	At the confluence with Sutton Creek	None	•6	Perquimans County
	Approximately 1,300 feet upstream of U.S. Highway 17	None	•13	(Unincorporated Areas)
Sutton Creek Tributary 4	At the confluence with Sutton Creek	None	•6	Perquimans County
	Approximately 2.2 miles upstream of the confluence with Sutton Creek.	None	•12	(Unincorporated Areas)
Sutton Creek Tributary 5	At the confluence with Sutton Creek	None	•7	Perquimans County
	Approximately 600 feet downstream of U.S. Highway 17	None	•10	(Unincorporated Areas)
Sutton Creek Tributary 6	At the confluence with Sutton Creek	None	•8	Perquimans County
	Approximately 0.7 mile upstream of U.S. Highway 17	None	•11	(Unincorporated Areas)
Sutton Creek Tributary 7	At the confluence with Sutton Creek	.....	.....	Perquimans County
	Approximately 1.1 miles upstream of the confluence with Sutton Creek.	.....	.....	(Unincorporated Areas)

Town of Hertford

Maps available for inspection at the Hertford Town Hall, 114 West Grubb Street, Herford, North Carolina.

Send comments to The Honorable James S. Eley, Mayor of the Town of Hertford, P.O. Box 32, Hertford, North Carolina 27944.

Perquimans County (Unincorporated Areas)

Maps available for inspection at the Perquimans County Courthouse, 110 North Church Street, Hertford, North Carolina.

Send comments to Mr. Wallace Nelson, Chairman of the Perquimans County Board of Commissioners, P.O. Box 45, Hertford, North Carolina 27944.

Town of Winfall

Maps available for inspection at the Winfall Town Hall, 100 Park View Lane, Winfall, North Carolina.

Send comments to The Honorable Fred Yates, Mayor of the Town of Winfall, P.O. Box 275, Winfall, North Carolina 27985.

NORTH CAROLINA
Various Communities in Washington County

Beaver Dam Branch	At the confluence with Kendricks Creek	None	•6	Washington County (Unincorporated Areas), Town of Roper
	Approximately 1.9 miles upstream of Cross Road	None	•10	Roper
Beaver Dam Branch Tributary 1.	At the confluence with Beaver Dam Branch	•10	•6	Washington County (Unincorporated Areas)
	Approximately 0.5 mile upstream of Highway 64	None	•16	
Chapel Swamp	Upstream side of Loop Road/Beasley Road Crossing	None	•6	Washington County (Unincorporated Areas)
	Upstream side of Loop Road/Beasley Road Crossing	None	•6	Washington County (Unincorporated Areas)
	Approximately 0.7 mile upstream of Beasley Road Extension.	None	•10	
Kendricks Creek	Approximately 1.1 miles downstream of the confluence with Beaver Dam Branch.	None	•9	Washington County (Unincorporated Areas), Town of Roper
	Approximately 0.6 mile upstream of West Mill Pond Road	None	•12	
Lee's Mill Creek	Upstream side of U.S. Highway 64/NC 32	None	•6	Washington County (Unincorporated Areas)
	Approximately 0.5 mile upstream of Downing Road	None	•11	
Main Canal	At the confluence with Kendricks Creek	None	•6	Washington County (Unincorporated Areas). Town of Roper

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.8 mile upstream of Highway 64/NC 32 ..	None	•12	
Pleasant Grove Creek	At U.S. Highway 64/NC 32	None	•6	Washington County (Unincorporated Areas)
	Approximately 1.6 miles upstream of Holly Neck Road	None	•10	(Unincorporated Areas)
Pungo River Canal	Approximately 0.9 mile downstream of Route 99	None	•9	Washington County (Unincorporated Areas)
	Approximately 700 feet downstream of Route 99	None	•10	

Town of Roper

Maps available for inspection at the Washington County Planning and Safety Department, 2nd floor, 120 Adams Street, Plymouth, North Carolina.

Send comments to The Honorable Estelle Sanders, Mayor of the Town of Roper, P.O. Box 217, Roper, North Carolina 27970.

Unincorporated Areas of Washington County

Maps available for inspection at the Washington County Planning and Safety Department, 2nd floor, 120 Adams Street, Plymouth, North Carolina.

Send comments to Mr. Chris Coudriet, Washington County Manager, P.O. Box 1007, Plymouth, North Carolina 27962.

	Approximately 0.9 mile southwest of the intersection of Garland Road and Bay View Drive.	*14	*17	
Wando River/Atlantic Ocean	Approximately 2,000 feet west of the intersection of Sugar Cane Way and 6th Street.	*12	*13	Town of Mount Pleasant, City of Charleston
	Approximately 1,800 feet north of the intersection of Molasses Lane and Hobcandt Drive.	*12	*16	
Ashley River/Atlantic Ocean	Approximately 0.4 mile east of the intersection of Albemarle Road and Ashley Point Road.	*17	*13	City of North Charleston, City of Charleston
	Approximately 1,600 feet east of the intersection of Mill Street and Albemarle Road.	*17	*16	
Cooper River/Atlantic Ocean	Approximately 0.8 mile southeast of the intersection of Partridge Avenue and Juneau Street.	None	*12	City of North Charleston, City of Charleston
	At the confluence with Wando River and Charleston Harbor.	*14	*17	

Charleston County (Unincorporated Areas)

Maps available for inspection at the Charleston County Building Services, 4045 Bridge View Drive, North Charleston, South Carolina 29405–7464.

Send comments to Mr. Roland H. Windham, Jr., Charleston County Administrator, 4045 Bridge View Drive, North Charleston, South Carolina 29405–7464.

City of Charleston

Maps available for inspection at the Charleston City Hall, 75 Calhoun Street, Division 301, Charleston, South Carolina 29401.

Send comments to The Honorable Joseph P. Riley, Jr., Mayor of the City of Charleston, P.O. Box 652, Charleston, South Carolina 29401.

Town of Mount Pleasant

Maps available for inspection at the Mount Pleasant Town Hall, 100 Ann Edwards Lane, Mount Pleasant, South Carolina.

Send comments to The Honorable Harry Hallman, Jr., Mayor of the Town of Mount Pleasant, P.O. Box 745, Mount Pleasant, South Carolina 29465.

City of North Charleston

Maps available for inspection at the North Charleston City Hall, 4900 Lacrosse Road, North Charleston, South Carolina 29406–6501.

Send comments to The Honorable Keith Summey, Mayor of the City of North Charleston, 4900 Lacrosse Road, North Charleston, South Carolina 29406–6501.

SOUTH CAROLINA
Greenville County

Big Durbin Creek Tributary 1	At the confluence with Big Durbin Creek	•785	•787	Greenville County (Unincorporated Areas), City of Simpsonville
	Approximately 650 feet upstream of the confluence with Big Durbin Creek.	•788	•789	
Gilder Creek	At the confluence with Enoree River	•677	•676	Greenville County (Unincorporated Areas), City of Mauldin
	Approximately 450 feet upstream of McDougal Court	None	•907	
Gilder Creek Tributary 1	At the confluence with Gilder Creek	•812	•813	City of Mauldin
	Approximately 750 feet upstream of the confluence with Gilder Creek.	•814	•815	
Gilder Creek Tributary 2	At the confluence with Gilder Creek	•819	•825	City of Mauldin
	Approximately 550 feet upstream of the confluence of Gilder Creek.	•824	•825	
Gilder Creek Tributary 3	At the confluence with Gilder Creek	•820	•825	Greenville County (Unincorporated Areas), City of Mauldin
	Approximately 1,500 feet upstream of the confluence of Gilder Creek.	•826	•827	

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Gilder Creek Tributary 3A	Approximately 50 feet upstream of the confluence with Gilder Creek Tributary 3.	•828	•829	Greenville County (Unincorporated Areas), City of Mauldin
	Approximately 150 feet upstream of U.S. Interstate 385	•889	•890	
Gilder Creek Tributary 4	At confluence with Gilder Creek	•795	•798	Greenville County (Unincorporated Areas), City of Mauldin
	Approximately 1,085 feet upstream of Substation Dam	None	•931	
Laurel Creek	At the confluence with Reedy River	•767	•769	Greenville County (Unincorporated Areas), City of Greenville, City of Mauldin
	Approximately 200 feet upstream of Interstate 85	•879	•878	
Reedy River Tributary 4	Approximately 1,235 feet upstream of the confluence with Reedy River.	•745	•746	Greenville County (Unincorporated Areas), City of Mauldin River
	Approximately 175 feet upstream of Owens Lane	None	•903	
Reedy River Tributary 5	At the confluence with Reedy River Tributary 4	None	•799	Greenville County (Unincorporated Areas), City of Mauldin
	Approximately 1.26 miles upstream of Ashmore Bridge Road.	None	•900	
Baker Creek	At the confluence with Huff Creek	None	•693	Greenville County (Unincorporated Areas).
	Approximately 190 feet upstream of Greybridge Road	None	•780	
Big Durbin Creek Tributary 1	At the confluence with Big Durbin Creek	•785	•787	Greenville County.
	Approximately 650 feet upstream of the confluence with Big Durbin Creek.	•788	•789	(Unincorporated Areas), City of Simpsonville.
Brushy Creek Tributary 2	At the confluence with Brushy Creek	•842	•841	City of Greenville.
	Approximately 40 feet upstream of Meyers Drive	None	•894	
Enoree River Tributary 1	Approximately 150 feet upstream of the confluence with Enoree River.	None	•780	Greenville County (Unincorporated Areas), City of Greer.
	Approximately 2,540 feet upstream of East Suber Road	None	•890	
Enoree River Tributary 2	Just upstream of East Suber Road	None	•820	Greenville County.
	Approximately 175 feet upstream of Hood Road	None	•903	(Unincorporated Areas), City of Greer.
Gilder Creek	At the confluence with Enoree River	•677	•676	Greenville County.
	Approximately 450 feet upstream of McDougal Court	None	•907	(Unincorporated Areas), City of Mauldin.
Gilder Creek Tributary 3	At the confluence with Gilder Creek	•820	•825	Greenville County.
	Approximately 1,500 feet upstream of the confluence of Gilder Creek.	•826	•827	(Unincorporated Areas), City of Mauldin.
Gilder Creek Tributary 3A	Approximately 50 feet upstream of the confluence with Gilder Creek Tributary 3.	•828	•829	Greenville County (Unincorporated Areas), City of Mauldin.
	Approximately 150 feet upstream of U.S. Interstate 385	•889	•890	
Gilder Creek Tributary 4	At confluence with Gilder Creek	•795	•798	Greenville County
	Approximately 1,085 feet upstream of Substation Dam	None	•931	(Unincorporated Areas), City of Mauldin.
Graze Creek	Approximately 650 feet upstream of Browns Lane	•738	•737	Greenville County (Unincorporated Areas).
	Approximately 400 feet upstream of McKinney Road	•781	•782	
Grove Creek	At Emily Lane	None	•772	Greenville County.
	Approximately 75 feet upstream of Fairview Boulevard	None	•848	(Unincorporated Areas).
Huff Creek	At the confluence with Reedy River	None	•656	Greenville County.
	Approximately 1.25 miles upstream of West Georgia Road.	None	•756	(Unincorporated Areas).
Laurel Creek	At the confluence with Reedy River	•767	•769	Greenville County.
	Approximately 200 feet upstream of Interstate 85	•879	•878	(Unincorporated Areas), City of Greenville, of Mauldin.
Laurel Creek Tributary	At the confluence with Laurel Creek	None	•781	Greenville County.
	Approximately 0.95 mile upstream of Ridge Road	•867	•868	(Unincorporated Areas), City of Greenville.
Little Creek	At the confluence with Huff Creek	None	•664	Greenville County.
	Approximately 3,800 feet upstream of the dam	None	•778	(Unincorporated Areas).
Payne Branch	At the county boundary	None	•681	Greenville County.
	Approximately 120 feet upstream of Tall Pines Road	None	•750	(Unincorporated Areas).
Reedy River	Approximately 1.0 mile downstream of the confluence of Huff Creek.	None	•650	Greenville County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 3,100 feet upstream of the Log Shoals Road.	None	•744	
Reedy River Tributary 4	Approximately 1,235 feet upstream of the confluence with Reedy River.	•745	•746	Greenville County (Unincorporated Areas), City of Mauldin.
	Approximately 175 feet upstream of Owens Lane	None	•903	
Reedy River Tributary 5	At the confluence with Reedy River Tributary 4	None	•799	Greenville County River (Unincorporated Areas), City of Mauldin.
	Approximately 1.26 miles upstream of Ashmore Bridge Road.	None	•900	
Richland Creek Tributary 1 ...	At the confluence with Richland Creek	•856	•855	City of Greenville.
	Approximately 175 feet upstream of Azalea Court	None	•965	
Richland Creek Tributary 1A	At the confluence with Richland Creek Tributary 1	•879	•881	City of Greenville.
	Approximately 500 feet upstream of Keith Drive	None	•947	
Richland Creek Tributary 1B	At the confluence with Richland Creek Tributary 1	None	•960	City of Greenville.
	Approximately 65 feet upstream of Greenland Drive/Dera Drive.	None	•979	
Rock Creek	Approximately 1,050 feet downstream of Alder Drive	None	•743	Greenville County (Unincorporated Areas).
	Approximately 1,760 feet upstream of Capewood Road ..	None	•772	
Rocky Creek	At the confluence with Enoree River	•713	•712	Greenville County.
	Approximately 490 feet upstream of Frontage Road	None	•1,001	(Unincorporated Areas), City of Greenville.
South Tyger River	Approximately 200 feet downstream of State Route 14 ...	None	•822	Greenville County (Unincorporated Areas).
	Approximately 180 feet upstream of State Route 414	None	•928	

City of Greenville

Maps available for inspection at the Greenville City Hall, 206 South Main Street, Greenville, South Carolina.

Send comments to the Honorable Knox H. White, Mayor of the City of Greenville, P.O. Box 2207, Greenville, South Carolina 29602.

Greenville County (Unincorporated Areas)

Maps available for inspection at the Greenville County Codes Department, 301 University Ridge, Greenville, South Carolina.

Send comments to Mr. John Brausch, Greenville County Interim Administrator, 301 University Ridge, Suite 2400, Greenville, South Carolina 29601.

City of Greer

Maps available for inspection at the Greer City Hall, 106 South Main Street, Greer, South Carolina.

Send comments to the Honorable Rick Danner, Mayor of the City of Greer, 106 South Main Street, Greer, South Carolina 29650.

City of Mauldin

Maps available for inspection at the Mauldin City Hall, 5 East Butler Avenue, Mauldin, South Carolina.

Send comments to the Honorable Lloyd S. Green, Sr., Mayor of the City of Mauldin, P.O. Box 249, Mauldin, South Carolina 29662.

City of Simpsonville

Maps available for inspection at the Simpsonville City Hall, 118 Northeast Main Street, Simpsonville, South Carolina.

Send comments to the Honorable Dennis Waldrop, Mayor of the City of Simpsonville, 118 Northeast Main Street, Simpsonville, South Carolina 29681.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 18, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–162 Filed 1–5–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7580]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
New Hampshire	Dover (City), Strafford County.	Boston Harbor	At a point immediately downstream of Scammel Bridge.	None	*7
			Approximately 100 feet east of northbound lane of Spaulding Turnpike bridge.	None	*7
Maps available for inspection at the Dover City Office, 288 Central Avenue, Dover, New Hampshire.					
Send comments to Mr. Paul Beecher, Dover City Manager, City Office, 288 Central Avenue, Dover, New Hampshire 03820.					
New York	Hoosick Falls (Village), Rensselaer County.	Hoosick River	Approximately 40 feet downstream of Church Street.	None	*416
			Approximately 0.51 mile upstream of Boston and Maine Railroad.	None	*431
Maps available for inspection at Hoosick Falls Village Office, 24 Main Street, Hoosick Falls, New York.					
Send comments to the Honorable Laura Reynolds, Mayor of the Village of Hoosick Falls, 24 Main Street, Hoosick Falls, New York 12090.					
Virginia	Falls Church (Independent City).	Poplar Drive Bypass	At confluence with Tripps Run	None	*337
			At upstream corporate limits	None	*343
		Tripps Run	Approximately 100 feet downstream of U.S. Route 29.	*281	*280
			Approximately 50 feet upstream of the upstream corporate limits.	None	*339
Maps available for inspection at City of Falls Church Department of Environmental Services, 300 Park Avenue, Falls Church, Virginia.					
Send comments to the Honorable Daniel Gardner, Mayor of the City of Falls Church, 300 Park Avenue, Falls Church, Virginia.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 18, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–163 Filed 1–5–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7574]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA (FEMA or Agency) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subject in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
NORTH CAROLINA Columbus County				
Beaverdam Swamp	At the confluence with Monte Swamp	None	•48	Columbus County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Chadbourn Clarendon Road.	None	•95	Columbus County (Unincorporated Areas).
Big Branch into Beaverdam Swamp.	At the confluence with Beaverdam Swamp	None	•81	Columbus County (Unincorporated Areas).
	Approximately 900 feet downstream of Railroad	None	•104	
Big Branch into Monte Swamp.	At the confluence with Monte Swamp	None	•38	Columbus County (Unincorporated Areas).
	Approximately 1.4 miles upstream of MM Ray Road	None	•47	Columbus County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Big Branch into Monte Swamp Tributary.	At the confluence with Big Branch into Monte Swamp	None	•44	Columbus County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Big Branch into Monte Swamp.	None	•47	
Big Branch into Western Prong Creek.	At the confluence with Western Pring Creek	None	•74	Columbus County (Unincorporated Areas).
	Approximately 1,700 feet upstream of Greens Mill Road	None	•90	
Big Creek into Lake Waccamaw.	At the confluence with Lake Waccamaw	None	•43	Columbus County (Unincorporated Areas), Town of Lake Waccamaw.
	Approximately 860 feet upstream of Old Lake Road	None	•56	
Big Creek into Marlow Branch.	At the upstream side of N.C. 905	None	•27	Columbus County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Big Avenue	None	•39	
Big Creek into Marlow Branch Tributary.	At the confluence with Big Creek into Marlow Branch	None	•28	Columbus County (Unincorporated Areas).
	Approximately 1.0 mile upstream of confluence with Big Creek.	None	•35	
Big Cypress Swamp	At the confluence with Seven Creeks	None	•30	Columbus County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Ramsey Ford Road	None	•42	
Big Freshwater Branch	At the confluence with Gapway Swamp	None	•80	Columbus County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Peanut Worely Road	None	•104	
Big Pond Branch	At the confluence with Beaverdam Swamp	None	•60	Columbus County (Unincorporated Areas).
	Approximately 500 miles upstream of Mary B. White Road.	None	•85	
Black Creek	At the confluence with Grissett Swamp	None	•80	
	Approximately 1.0 mile upstream of South Joe Brown Highway.	None	•99	
Boggy Branch	At the confluence with Beaverdam Swamp and Monte Swamp.	None	•48	Columbus County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Old Tram Road	None	•56	
Boggy Hill Branch	At the confluence with Grissett Swamp	None	•80	Columbus County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Old Stake Road	None	•90	Columbus County (Unincorporated Areas).
Bogue Swamp	Approximately 1.0 mile downstream of the confluence of Alligator Branch.	.....	•41/42	Columbus County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Unnamed Road	None	•64	
Brier Creek	At the County boundary	None	•85	Columbus County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Haynes Lennon Highway.	None	•101	
Browders Branch	At the confluence with Western Prong Creek	None	•70	Columbus County (Unincorporated Areas).
	Approximately 400 feet upstream of Jordan Road	None	•82	
Brown Marsh Swamp	At the upstream side of Red Hill Road	None	•70	Columbus County (Unincorporated Areas).
	At the confluence of Slades Swamp	None	•70	
Brown Mill Branch	At the confluence with Dunn Swamp	None	•77	Columbus County (Unincorporated Areas).
	Approximately 1.8 miles upstream of Williamsons Crowwroad.	None	•95	
Butler Branch	At the confluence with Western Prong Creek	None	•64	Columbus County (Unincorporated Areas).
	At the downstream side of James B. White Highway	None	•71	
Camp Swamp	Approximately 920 feet downstream of the State boundary.	None	•30	Columbus County (Unincorporated Areas).
	Approximately 1,200 feet downstream of Dulah Road	None	•44	
Camp Swamp Tributary 1	Approximately 960 feet downstream of the State boundary.	None	•32	Columbus County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Dothan Road	None	•41	
Camp Swamp Tributary 2	At the confluence with Camp Swamp	None	•32	Columbus County (Unincorporated Areas).
	At Dothan Road	None	•37	
Cedar Branch into Soules Swamp.	At the confluence with Soules Swamp	None	•68	Columbus County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 250 feet upstream of Chadbourn Clarendon Road.	None	•89	
Cedar Branch into Beaverdam Swamp.	At the confluence with Beaverdam Swamp	None	•67	Columbus County (Unincorporated Areas).
	Approximately 200 feet upstream of Peacock Road	None	•83	
Cow Branch	At the downstream side of Williamsons Crossroad	•74	•75	Columbus County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Strawberry Boulevard.	None	•98	
Cowpen Branch	At the confluence with Bogue Swamp	None	•51	Columbus County (Unincorporated Areas).
	Approximately 700 feet upstream of Hallsboro Road	None	•57	
Creek Branch	At the confluence with Slap Swamp	None	•49	Columbus County (Unincorporated Areas)., Town of Lake Waccamaw
	Approximately 0.4 mile upstream of East Andrew Jackson Highway.	None	•56	
Crooked Run Branch	At the confluence with Gapway Swamp	None	•77	Columbus County (Unincorporated Areas).
	At the State boundary	None	•89	
Curries Branch	At the confluence with Butler Branch	None	•64	Columbus County (Unincorporated Areas).
	Approximately 1.3 miles upstream of James B. White Highway.	None	•85	
Deep Branch	At the State boundary	None	•27	Columbus County (Unincorporated Areas).
	Approximately 0.5 mile downstream of Savannah Road	None	•40	
Dunn Swamp	At the confluence with Porter Swamp	None	•77	Columbus County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Bird Cage Road	None	•93	
Dunn Swamp Tributary.	At the confluence with Dunn Swamp	None	•84	Columbus County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Dunn Swamp.	None	•90	
Dunn Swamp Tributary 2	At the confluence with Dunn Swamp	None	•86	Columbus County (Unincorporated Areas).
	Approximately 200 feet upstream of Braswell Road	None	•95	
Dunn Swamp Tributary 3	At the confluence with Dunn Swamp	None	•87	Columbus County (Unincorporated Areas).
	Approximately 400 feet upstream of Strawberry Boulevard.	None	•95	
Tributary to Dunn Swamp Tributary 2.	At the confluence with Dunn Swamp Tributary 2	None	•92	Columbus County (Unincorporated Areas).
	Approximately 650 feet upstream of the confluence with Dunn Swamp Tributary 2.	None	•92	
Fivemile Branch	At the confluence with Soules Swamp	None	•67	Columbus County (Unincorporated Areas).
	Approximately 400 feet downstream of Hubert White Road.	None	•95	
Friar Swamp	At the confluence with Big Creek	None	•49	Columbus County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Old Lake Road	None	•54	
Gapway Swamp	Approximately 300 feet downstream of Andrew Jackson Highway.	None	•62	Columbus County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Sidney Cherry Grove Road.	None	•102	
Green Branch	At the confluence with Dunn Swamp	None	•80	Columbus County (Unincorporated Areas).
	Approximately 1.1 mile upstream of Brasswell Road	None	•94	
Greenes Branch	At the confluence with Western Prong Creek	None	•75	Columbus County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Silver Spoon Road	None	•91	
Griffith Branch	At the confluence with White Marsh	None	•54	Columbus County (Unincorporated Areas)., City of Whiteville
	Approximately 0.4 mile upstream of confluence with White Marsh.	•55	•56	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Grissett Swamp	At the confluence with Seven Creeks	None	•30	Columbus County (Unincorporated Areas)., Town of Tabor City
	Approximately 0.8 mile upstream of Emerson Church Road.	None	•96	
Grissett Swamp Tributary	At the confluence with Grissett Swamp	None	•81	Columbus County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Emerson Church Road.	None	•102	
Gum Swamp	At the confluence with Monte Swamp	None	• 44	Columbus County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Old Stake Road	None	• 101	
Honey Island Swamp	At the confluence with Juniper Creek	None	• 43	Columbus County (Unincorporated Areas).
	Approximately 0.3 mile downstream of Green Swamp Road South.	None	• 54	
Horsepen Branch	At the Columbus/Robeson County	None	• 89	Columbus County (Unincorporated Areas).
	At the Columbus/Bladen County boundary	None	• 89	
Huggins Creek	Approximately 70 feet downstream of the State boundary	None	• 87	Columbus County (Unincorporated Areas).
	Approximately 1,700 feet upstream of Swamp Fox Highway East.	None	• 98	
Ironhill Branch	At the confluence with Toms Fork	None	• 48	Columbus County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Reynolds Road	None	• 73	
Ironhill Branch Tributary	At the confluence with Ironhill Branch	None	• 65	Columbus County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Kenny Jordan Road	None	• 73	
Jockey Branch	At the confluence with Bogue Swamp	None	• 46	Columbus County (Unincorporated Areas).
	Approximately 0.6 mile upstream of South Hallsboro Road.	None	• 53	
Juniper Creek into Soules Swamp.	At the confluence with Soules Swamp	None	• 73	Columbus County (Unincorporated Areas).
	At the downstream side of Interstate 74/76	None	• 91	
Juniper Creek into Waccamaw River.	Approximately 2,300 feet upstream of the confluence with Waccamaw River.	None	• 35	Columbus County (Unincorporated Areas).
	Approximately 1,350 feet upstream of the confluence of Leonard Creek.	None	• 43	
Juniper Swamp	At the confluence with Grissett Swamp	None	• 38	Columbus County (Unincorporated Areas).
	At the State boundary	None	• 60	
Lake Waccamaw	Entire shoreline within community	None	• 43	Columbus County (Unincorporated Areas)
Lebanon Branch	At the confluence with Beaverdam Swamp	None	• 57	Columbus County (Unincorporated Areas)
	Approximately 0.4 mile upstream of James B. White Highway.	None	• 76	
Little Freshwater Branch	At the confluence with Big Freshwater Branch	None	• 86	Columbus County (Unincorporated Areas)
	Approximately 0.9 mile upstream of the confluence with Big Freshwater Branch.	None	•95	
Long Branch into Brown Mill Branch.	At the confluence with Brown Mill Branch	None	• 78	Columbus County (Unincorporated Areas)
	Approximately 1,030 feet upstream of the confluence with Brown Mill Branch.	None	• 79	
Long Branch into Gapway Swamp.	At the confluence with Gapway Swamp	None	• 79	
	Approxinmately 750 feet upstream of Coleman Cemetery Road.	None	• 94	(Unincorporated Areas).
Main Line Canal	At the confluence with Big Creek	None	• 43	Columbus County.
	At the South Green Swamp Road	None	• 48	(Unincorporated Areas) Town of Bolton.
Marlow Branch	At the upstream side of State Road 905	None	• 27	Columbus County.
	Approximately 1,450 feet upstream of Seven Creeks Parkway.	None	• 30	(Unincorporated Areas).
Mill Branch Swamp	At the confluence with Gum Swamp	None	• 59	Columbus County.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	At the downstream side of South Joe Brown Highway	None	• 97	(Unincorporated Areas).
Mollie Swamp	At the confluence with Monte Swamp	None	• 42	Columbus County.
	Approximately 0.5 mile upstream of Edward Road	None	• 50	(Unincorporated Areas).
Mollies Branch	At the confluence with Soules Swamp	None	• 57	Columbus County.
	Approximately 500 feet upstream of New Britton Highway	None	• 69	(Unincorporated Areas), City of Whiteville.
Monte Swamp	At the confluence with Grissett Swamp	None	• 37	Columbus County.
	At the confluence of Beaverdam Swamp and Boggy Branch.	None	• 48	(Unincorporated Areas).
Palmetto Branch	At the confluence with Bogue Swamp	None	• 45	Columbus County.
	Approximately 0.4 mile upstream of South Hallsboro Road.	None	• 51	(Unincorporated Areas).
Pine Log Branch	At the confluence with Soules Swamp	None	• 58	Columbus County.
	Approximately 2.6 miles upstream of Union Valley Road	None	• 94	(Unincorporated Areas), City of Whiteville.
Porter Swamp	At the upstream side of Homer Nance Road	None	• 74	Columbus County.
	Approximately 0.7 mile upstream of the confluence of Water Branch.	None	• 92	(Unincorporated Areas).
Red Hill Swamp	At the confluence with Western Prong Creek and White Marsh.	None	•63	Columbus County (Unincorporated Areas).
	At the upstream side of Red Hill Road	None	•70	
Rattlesnake Creek	At the confluence with Spring Branch	None	•91	Columbus County (Unincorporated Areas).
	Approximately 500 feet downstream of State Road 242	None	•106	Columbus County (Unincorporated Areas).
Ricefield Branch	At the confluence with Big Creek	None	•51	Columbus County (Unincorporated Areas).
	Approximately 200 feet downstream of Old Lake Road	None	•63	
Ricefield Branch Tributary	At the confluence with Ricefield Branch	None	•54	Columbus County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Ricefield Branch.	None	•59	
Richlands Branch	At the confluence with Slap Swamp	None	•61	Columbus County (Unincorporated Areas).
	At the Columbus/Bladen County boundary	None	•73	
Saespan Branch	At the confluence with Friar Swamp	None	•50	Columbus County (Unincorporated Areas).
	At the Columbus/Bladen County boundary	None	•59	
Sand Pit Branch	At the confluence with Simmons Bay Creek	•34	•33	Columbus County (Unincorporated Areas).
	Approximately 1.1 mile upstream of Happy Home Road	None	•41	
Seven Creeks	At the upstream side of Seven Creeks Highway	None	•29	Columbus County (Unincorporated Areas).
	At the confluence of Big Cypress Swamp & Grissett Swamp.	None	30	
Simmons Creek	At the confluence with Grissett Swamp	None	•80	Columbus County (Unincorporated Areas)., Town of Tabor City.
	Approximately 250 feet upstream of Willoughby Road	None	91	
Skeebo Branch	At the confluence with Grissett Swamp	None	•70	Columbus County (Unincorporated Areas)., Town of Tabor City.
	Approximately 0.4 mile upstream of Will Inman Road	None	•86	
Slap Branch	At the confluence with Slap Swamp	None	•76	Columbus County (Unincorporated Areas).
Slap Swamp	At the confluence with Big Creek into Marlow Branch	None	•87	
Slap Swamp	At the confluence with Big Creek into Marlow Branch	None	•49	Columbus County (Unincorporated Areas).
	Approximately 200 feet upstream of Old Northeast Road	None	•76	
Slap Swamp Tributary 1	At the confluence with Slap Swamp	None	•51	Columbus County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Slap Swamp.	None	•53	
Slap Swamp Tributary 2	At the confluence with Slap Swamp	None	•57	Columbus County (Unincorporated Areas).
	Approximately 1,990 feet upstream of Chauncey Town Road.	None	•62	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Spring Branch into Bogue Swamp.	At the confluence with Bogue Swamp	None	•57	Columbus County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Bogue Swamp.	None	•69	
Soules Swamp	At the confluence with White Marsh Swamp	None	•51	Columbus County (Unincorporated Areas)., Town of Chadbourn, City of Whiteville.
	Approximately 650 feet upstream of Railroad Avenue	None	•90	
Spring Branch into Rattlesnake Creek.	At the confluence with Horsepen Branch	None	•89	Columbus County (Unincorporated Areas).
	At the confluence of Rattlesnake Creek	None	•91	
Sweet Water Branch	At the confluence with Beaverdam Swamp	None	•67	Columbus County (Unincorporated Areas).
	Approximately 400 feet upstream of Sellers Town Road	None	•73	
Toms Fork	At the confluence with Grissett Swamp	None	•45	Columbus County (Unincorporated Areas).
	Approximately 200 feet upstream of the State boundary	None	•70	
Toms Fork Tributary	At the confluence with Toms Fork	None	•66	Columbus County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Cox Town Road	None	•80	
Tributary to Toms Fork Tributary.	At the confluence with Toms Fork Tributary	None	•76	Columbus County (Unincorporated Areas).
	At the State boundary	None	•85	
Town Canal	At the confluence with Grissett Swamp	None	•70	Columbus County (Unincorporated Areas)., Town of Tabor City.
	Approximately 400 feet upstream of Elizabeth Street	None	•81	
Uncles Branch	At the confluence with Porter Swamp	None	•80	Columbus County (Unincorporated Areas)., Town of Cerro Gordo
	Approximately 0.5 mile upstream of Charles Ford Road	None	•94	
Ward Branch into Simmons Bay Creek.	At the confluence with Simmons Bay Creek	•34	•33	Columbus County (Unincorporated Areas).
	Approximately 1,750 feet upstream of Manly Smith Road	None	•43	
Ward Branch into Slap Swamp.	At the confluence with Slap Swamp	None	•76	Columbus County (Unincorporated Areas).
	Approximately 200 feet upstream of Pocosin Road	None	•84	
Welch Creek	At the confluence with White Marsh	None	• 61	Columbus County
	Approximately 0.8 mile upstream of Burneys Mill Road	None	• 83	(Unincorporated Areas).
Western Prong Creek	At the confluence with White Marsh	None	• 63	Columbus County
	Red Store Road	None	• 93	(Unincorporated Areas).
Whiskey Swamp	At the confluence with Juniper Swamp	None	• 40	Columbus County
	Just downstream of Dothan Road	None	• 63	(Unincorporated Areas).
White Oak Branch	At the confluence with Bogue Swamp	None	• 55	Columbus County
	Approximately 1.3 miles upstream of the confluence with Bogue Swamp.	None	• 61	(Unincorporated Areas).
White Marsh	Approximately 1.6 miles downstream of South Hallsboro Road.	None	• 42	Columbus County
	At the confluence of Western Prong Creek and Red Hill Swamp.	None	• 63	(Unincorporated Areas).
Williams Branch	At the confluence with Gum Swamp	None	• 53	Columbus County
	Approximately 0.5 mile upstream of John Ward Road	None	• 67	(Unincorporated Areas).
Wolf Trap Branch	At the confluence with Porter Swamp	None	• 74	Columbus County
	Approximately 825 feet upstream of SW Andrew Jackson Highway.	None	• 90	(Unincorporated Areas)..

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Town of Bolton				
Maps available for inspection at the Bolton Town Hall, 221 9th Street, Bolton, North Carolina.				
Send Comments to The Honorable Frank Wilson, Mayor of the Town of Bolton, P.O. Box 327, Bolton, North Carolina, 28423.				
Town of Cerro Gordo				
Maps available for inspection at the Cerro Gordo Town Hall, 36 West Railroad Street, Cerro Gordo, North Carolina.				
Send comments to The Honorable Rodney Hammond, Mayor of the Town of Cerro Gordo, P.O. Box 160, Cerro Gordo, North Carolina, 28430.				
Town of Chadbourn				
Maps available for inspection at the Office of the Town Manager, 208 East First Street, Chadbourn, North Carolina.				
Send comments to The Honorable Leo Mercer, Mayor of the Town of Chadbourn, 208 East First Street, Chadbourn, North Carolina, 28431.				
Columbus County (Unincorporated Areas).				
Maps available for inspection at the Columbus County Tax Office, 110 Courthouse Square, Whiteville, North Carolina.				
Send comments to Mr. Billy Joe Farmer, Columbus County Manager, 111 Washington Street, Whiteville, North Carolina, 28472.				
Town of Lake Waccamaw				
Maps available for inspection at the Office of the Building Inspector, 205 Flemington Drive, Lake Waccamaw, North Carolina.				
Send comments to Mr. Lloyd Payne, Lake Waccamaw Town Manager, P.O. Box 145, Lake Waccamaw, North Carolina, 28450.				
Town of Whiteville				
Maps available for inspection at the Whiteville City Hall, 317 South Madison Street, Whiteville, North Carolina.				
Send comments to The Honorable Ann Jones, Mayor of the City of Whiteville, P.O. Box 607, Whiteville, North Carolina, 28472.				
NORTH CAROLINA Craven County				
Bachelor Creek	At Washington Post Road	None	• 8	Craven County (Unincorporated Areas).
	At the Craven/Jones County boundary	None	• 29	
Beaverdam Branch	At the confluence with Bachelor Creek	None	• 10	Craven County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Hyman Road	None	• 12	
Beaverdam Swamp	At the confluence with Little Swift Creek	None	• 9	Craven County (Unincorporated Areas).
	Approximately 800 feet upstream of Hudnell Road	None	• 17	
Black Swamp Creek	Approximately 2.0 miles downstream of Catfish Lake Road.	None	• 30	Craven County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Catfish Lake Road	None	• 37	
Brice Creek	At upstream side of Old Airport Road	None	• 8	Craven County (Unincorporated Areas).
	At the confluence with East Prong Brice Creek	None	• 15	
Bushy Fork	At the confluence with Little Swift Creek	None	• 23	Craven County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Little Swift Creek.	None	• 28	
Cahoogue Creek	Approximately 0.5 mile downstream of State Route 306	None	• 8	Craven County (Unincorporated Areas).
	Approximately 0.3 mile upstream of NC Route 101	None	• 19	
Clayroot Swamp	At the confluence with Swift Creek	None	• 19	Craven County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Wilmer Road	None	• 21	
Clubfoot Creek	At the downstream side of Adam Creek Road	None	•8	Craven County (Unincorporated Areas)..
	Approximately 1,850 feet downstream of Hodge Road	None	•10	
Clubfoot Creek Tributary	Approximately 1,800 feet downstream of Adams Creek Road.	None	•8	Craven County (Unincorporated Areas)..
	Approximately 300 feet upstream of George Road	None	•13	
Core Creek	At the confluence with Neuse River	None	•19	Craven County (Unincorporated Areas)..
	Approximately 0.8 mile upstream of Trenton Road	None	•36	
Creeping Swamp	At the confluence of Clayfoot Swamp	None	•21	Craven County (Unincorporated Areas)..
	At the Craven/Beaufort County boundary	None	•33	
Deep Branch	At the confluence with Bachelor Creek	None	•14	Craven County (Unincorporated Areas)..
	Approximately 0.5 mile downstream of Clarks Road	None	•14	
East Prong Brice Creek	At the confluence with Brice Creek	None	•15	Craven County (Unincorporated Areas)..
	Approximately 1.9 miles upstream of the confluence with Brice Creek.	None	•19	
East Prong Mortons Mill Pond.	At the confluence with Mortons Mill Pond	None	•8	Craven County (Unincorporated Areas)..

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1,500 feet upstream of NC 101	None	•10	
East Prong Slocum Creek	At the upstream side of Railroad Street	None	•15	City of Havelock, Craven County (Unincorporated Areas)..
	Approximately 1.5 miles upstream of Railroad Street	None	•19	
Fisher Swamp	At the confluence with Beaver Dam Swamp	None	•9	Craven County (Unincorporated Areas)..
	Approximately 3.4 miles upstream of the confluence with Beaverdam Swamp.	None	•22	
Flat Branch	At the confluence with Core Creek	None	•19	Craven County (Unincorporated Areas)..
	Approximately 1.8 miles upstream of NC 55	None	•30	
Great Branch	At the confluence with Brice Creek	None	•15	Craven County (Unincorporated Areas)..
	Approximately 900 feet upstream of Tebo Road	None	•19	
Hancock Creek	At the upstream side of NC 101	None	•8	City of Havelock, Craven County (Unincorporated Areas)..
	Approximately 1.6 miles upstream of NC 101	None	•21	
Hollis Branch	At the confluence with Bachelor Creek	None	•27	Craven County (Unincorporated Areas)..
	Approximately 540 feet upstream of Hillard Road	None	•36	
HuntersCreek	At the Craven/Carteret/Jones County boundary	None	•24	Craven County (Unincorporated Areas)..
	Approximately 500 feet downstream of Great Lake	None	•40	
Jumping Run	At the confluence with Bachelor Creek	None	•8	Craven County (Unincorporated Areas)..
	Approximately 250 feet downstream of Highway 55	None	•15	
Little Swift Creek	At the upstream side of Highway 17	None	•8	Craven County (Unincorporated Areas)..
	Approximately 650 feet upstream of Beaver Dam Road	None	•25	
Maple Cypress	At the confluence with Neuse River	None	•20	Craven County (Unincorporated Areas)..
	Approximately 0.7 mile upstream of Harris Road	None	29	
Mauls Swamp	At the upstream side of Mill Pond Road	None	•15	Town of Vanceboro, Craven County (Unincorporated Areas)..
	Approximately 1.1 miles upstream of the confluence of Mauls Swamp Tributary 2.	None	•34	
Mauls Swamp Tributary 1	At the confluence with Mauls Swamp	None	•23	Craven County (Unincorporated Areas)..
	Approximately 0.8 mile upstream of the confluence with Mauls Swamp.	None	•30	
Mauls Swamp Tributary 2	At the confluence with Mauls Swamp	None	•28	Craven County (Unincorporated Areas)..
	Approximately 0.9 mile upstream of the confluence with Mauls Swamp.	None	•35	
Mill Branch	At the confluence with Core Creek	None	•26	Craven County (Unincorporated Areas)..
	Approximately 4.5 miles upstream of the confluence with Core Creek.	None	•56	
Molocks Branch	At the confluence with Hancock Creek	None	•8	Craven County (Unincorporated Areas)..
	Approximately 0.7 mile upstream of the confluence with Hancock Creek.	None	•14	
Morgan Swamp	At the confluence with Upper Broad Creek	None	•10	Craven County (Unincorporated Areas)..
	Approximately 1.2 miles upstream of Morgan Swamp Road.	None	•22	
Mosley Creek	At the confluence with Neuse River	None	•25	Craven County (Unincorporated Areas)..
	Approximately 1.7 miles upstream of the confluence with Neuse River.	•24	•25	
Mosley Creek Tributary	At the confluence with Mosley Creek	None	•29	Craven County (Unincorporated Areas)..
	Approximately 2 miles upstream of the confluence with Mosley Creek.	None	•37	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Neuse River	Approximately 0.7 mile upstream of the confluence of Swift Creek.	•8	•9	City of New Bern, Craven County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Contentnea Creek.	None	•25	
Palmetto Swamp	At the confluence with Swift Creek	None	•17	Craven County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Palmetto Swamp Tributary 4.	None	•32	
Palmetto Swamp Tributary 1	At the confluence with Palmetto Swamp	None	•19	Craven County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Palmetto Swamp.	None	•27	
Palmetto Swamp Tributary 2	At the confluence with Palmetto Swamp	None	•20	Craven County (Unincorporated Areas).
	Approximately 150 feet upstream of Clark Road	None	•26	
Palmetto Swamp Tributary 3	At the confluence with Palmetto Swamp	None	•24	Craven County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Palmetto Swamp.	None	•28	
Palmetto Swamp Tributary 4	At the confluence with Palmetto Swamp	None	•29	Craven County (Unincorporated Areas).
	Approximately 800 feet upstream of Gray Road	None	•39	
Pine Tree Swamp	At the confluence with Little Swift Creek	None	•14	Craven County (Unincorporated Areas).
	At Cayton Road	None	•25	
Pollard Swamp	At the confluence with Creeping Swamp	None	•30	Craven County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Pollard Road	None	•41	
Rollover Creek	At the confluence with Bachelor Creek	None	•17	Craven County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Rollover Creek Road	None	•37	
Round Tree Branch	At the confluence with Bachelor Creek	None	•8	Craven County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Bachelor Creek.	None	•11	
South Canal	At the confluence with Hunters Creek	None	•33	Craven County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Hunters Creek.	None	•38	
Southwest Prong Slocum Creek.	At the upstream side of Miller Boulevard	None	•8	City of Havelock, Craven County (Unincorporated Areas).
	Approximately 2.9 miles upstream of Central Street	None	•27	
Spe Branch	At the confluence with Cahoogue Creek	None	•10	Craven County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Cahoogue Creek.	None	•15	
Swift Creek	Approximately 0.6 mile upstream of NC Highway 43	•8	•9	Town of Vanceboro, Craven County (Unincorporated Areas).
	Approximately 300 feet upstream of Gardnerville Road	None	•28	
Tracey Swamp	At the upstream side of Sand Hill Road	None	•42	Craven County (Unincorporated Areas).
	At the Craven/Jones Country boundary	None	•43	
Upper Broad Creek (Neuse Portion).	Approximately 1.8 miles downstream of the confluence of Deep Run.	None	•8	Craven County (Unincorporated Areas).
	Approximately 2.9 miles upstream of the confluence of Possum Swamp.	None	•29	
Upper Broad Creek (Tar-Pamlico Portion).	Approximately 125 feet downstream of the Craven/Beaufort County boundary.	None	•31	Craven County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the Craven/Beaufort County boundary.	None	•37	
Village Creek	At the confluence with Neuse River	None	•20	Craven County (Unincorporated Areas).
	Approximately 400 feet upstream of Highway 55	None	•45	
West Prong Brice Creek	At the confluence with Brice Creek	None	•15	Craven County (Unincorporated Areas).

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		Existing	Modified	
	Approximately 0.7 mile upstream of Catfish Lake Road ...	None	•36	
West Prong Mortons Mill Pond.	At the confluence with Mortons Mill Pond	None	•8	Craven County (Unincorporated Areas).
	Approximately 1.3 miles upstream of North Carolina Route 101.	None	•18	
City of Havelock Maps available for inspection at the City of Havelock Planning Department, 199 Cunningham Boulevard, North Carolina 28532. Send comments to The Honorable George Griffin, Mayor of the City of Havelock, P.O. Box 368, Havelock, North Carolina 28532.				
City of New Bern Maps available for inspection at the New Bern Building Inspection Department, 300 Pollock Street, New Bern, North Carolina. Send comments to The Honorable Tom Bayliss, III, Mayor of the City of New Bern, P.O. Box 1129, New Bern, North Carolina 28563.				
Unincorporated Areas of Craven County Maps available for inspection at the Craven County Planning Department, Craven County Government, 406 Craven Street, New Bern, North Carolina. Send comments to Mr. Johnnie Sampson, Jr., Chairman of the Craven County Board of Commissioners, 406 Craven Street, New Bern, North Carolina 28560.				
Town of Vanceboro Maps avaialble for inspection at the Craven County Planning Department, 406 Craven Street, New Bern, North Carolina. Send comments to The Honorable Jimmie Morris, Mayor of the Town of Vanceboro, P.O. Box 306, Vanceboro, North Carolina 28586.				
	NORTH CAROLINA Granville County			
Aycock Creek	At the confluence with Johnson Creek	None	• 317	Granville County
	Approximately 1,880 feet upstream of Sanders Road	None	• 360	(Unincorporated Areas)
Beaverdam Creek	At the Granville/Wake County boundary	None	• 262	Granville County
	Approximately 600 feet upstream of NC 56	None	• 318	(Unincorporated Areas)
Beaverdam Creek Tributary 3	At the confluence with Beaverdam Creek	None	• 282	
	Approximately 0.9 mile upstream of Side Road	None	• 319	(Unincorporated Areas)
Beaverdam Creek Tributary 5	At the confluence with Beaverdam Creek	None	• 305	Granville County

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.4 mile upstream of the confluence with Beaverdam Creek.	None	• 314	(Unincorporated Areas)
Bollens Creek	At the confluence with Boul Creek	None	• 321	Granville County
	Approximately 0.6 mill upstream of US HWY 15	None	• 321	Granville County
	Approximately 1.3 miles upstream of the confluence of Bollens Creek.	None	• 358	(Unincorporated Areas)
Camp Creek	At the confluence with Knap of Reeds Creek	None	• 376	Granville County
	At the Granville/Durham County boundary	None	• 427	(Unincorporated Areas)
Cedar Creek	At the confluence with Robertson Creek	None	• 279	Granville County
	Approximately 1.3 miles upstream of Hayes Road	None	• 313	(Unincorporated Areas)
Coon Creek	Approximately 200 feet upstream of the confluence with Fishing Creek.	None	• 343	Granville County
	Approximately 100 feet upstream of Winding Oak Road	None	• 450	(Unincorporated Areas), City of Oxford
Cozart Creek	Approximately 450 feet downstream of West B Street	None	• 262	Granville County
	Approximately 1,900 feet upstream of Coley Road	None	• 272	(Unincorporated Areas)
Cozart Creek Tributary 1.	Approxiamtely 250 feet downstream of Roycroft Road	None	• 262	Granville County
	Approximatley 1.5 miles upstream of US 15	None	• 282	(Unincorporated Areas)
Cozart Creek Tributary 2.	At the confluence with Cozart Creek Tributary 1	None	• 262	Granville County
	Approximately 0.9 mile upstream of the confluence with Cozart Creek Tributary 1.	None	• 278	(Unincorporated Areas)
Cozart Creek Tributary 3.	At the confluence with Cozart Creek	None	• 262	Granville County
	Approximately 0.5 mile upstream of Northside Road	None	• 270	(Unincorporated Areas)
Cub Creek	At the confluence with the Tar River	None	• 432	Granville County
	Approximately 600 feet upstream of George Sherman Road.	None	• 478	(Unincorporated Areas)
Cub Creek Tributary	At the confluence with Cub Creek	None	• 439	Granville County
	At the Granville/Person County boundary	None	• 477	(Unincorporated Areas)
Dickens Creek	At the confluence with Knap of Reeds Creek	None	• 360	Granville County
	Approximately 1,650 feet upstream of Little Mountain Road.	None	• 440	(Unincorporated Areas)
Fishing Creek	Approximately 700 feet upstream of Knotts Grove Road	None	• 375	Granville County
	Approximately 1,700 feet upstream of Interstate 85	None	• 409	(Unincorporated Areas) Unincorporated Areas), City of Oxford
Fishing Creek Tributary 1	Approximately 200 feet upstream of US HWY 15	None	• 434	Granville County
	Approximately 50 feet upstream of Sunset Avenue	None	• 457	(Unincorporated Areas) Unincorporated Areas), City of Oxford
Fork Creek	At the confluence with the Tar River	None	• 245	Granville County
	Approximately 500 feet upstream of Old Mill Farm Road	None	• 342	(Unincorporated Areas)
Fox Creek	At the confluence with Shelton Creek	None	246	Granville County
	Approximately 3.4 miles upstream of Sunset Road	None	376	(Unincorporated Areas)
Gibbs Creek	At the confluence with the Tar River	None	•288	Granville County (Unincorporated Areas).
	Approximately 4.9 miles upstream of Gray Rock Road	None	•469	
Holman Creek Tributary 1	At Brogden Road	None	•288	Granville County (Unincorporated Areas)., City of Creedmoor.
	Approximately 700 feet upstream of State Route 1136	None	•469	
Holman Creek Tributary 2	At the confluence with Holman Creek	None	•378	Granville County (Unincorporated Areas), Town of Stem.
	Approximately 2,000 feet upstream of Tally Ho Road	None	•436	
Holman Creek	At the confluence with Holman Creek	None	•395	Granville County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Holman Creek.	None	•428	
Holman Creek Tributary 3	At the confluence with Holman Creek	None	•309	Granville County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Holman Creek.	None	•330	
Jackson Creek	At the confluence with the Tar River	•359	•366	Granville County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Old Route 75	None	•441	
Johnson Creek	Approximately 0.4 mile downstream of Tar River Road	None	•317	Granville County (Unincorporated Areas).
	Approximately 1,100 feet downstream of Interstate 85	None	•363	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Johnson Creek Tributary	Approximately 1,700 feet downstream of Tar River Road	None	•316	Granville County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Tar River Road	None	•329	
Johnson Creek Tributary 1 ...	At the confluence with Jordan Creek	None	•448	Granville County (Unincorporated Areas)., City of Oxford
	Approximately 1.4 miles upstream of the confluence with Jordan Creek.	None	•480	
Jordan Creek Tributary 2	At the confluence with Jordan Creek	None	•448	Granville County (Unincorporated Areas)., City of Oxford
	Approximately 0.7 mile upstream of the confluence with Jordan Creek.	None	•462	
Knap Creek Tributary	At the confluence with Lake Butner	None	•360	Granville County (Unincorporated Areas).
	Approximately 700 feet upstream of Roberts Chapel Road.	None	•419	
Knap of Reeds Creek	At Roberts Chapel Road	None	•360	Granville County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Enon Road	None	•452	
Knap of Reeds Creek Tributary 1.	At the confluence with Knap of Reeds Creek	None	•422	Granville County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Knap of Reeds Creek.	None	•459	
Knap of Reeds Creek Tributary 2.	At the confluence with Knap of Reeds Creek	None	•446	Granville County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Knap of Reeds Creek.	None	•456	
Knap Reed Tributary	At the confluence with Knap of Reeds Creek	None	•265	Granville County (Unincorporated Areas).
	Approximately 1,000 feet downstream of Amed Road	None	•265	
Ledge Creek	At the Granville/Wake County boundary	None	•263	Granville County (Unincorporated Areas)., Town of Stem.
	Approximately 0.6 mile upstream of Little Mountain Road	None	•472	
Ledge Creek Tributary 2	At the confluence with Ledge Creek	None	•267	Granville County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Ledge Creek.	None	•280	
Ledge Creek Tributary 3	At the downstream side of U.S. 15	None	•278	Granville County (Unincorporated Areas)., City of Creedmoor.
	Approximately 0.4 mile upstream of U.S. 15	None	•311	
Ledge Creek Tributary 4	Approximately 1,500 feet upstream of the confluence of Ledge Creek Tributary 3.	None	•279	Granville County (Unincorporated Areas)., City of Creedmoor.
	Approximately 1,150 feet upstream of Charles Street	None	•314	
Mill Creek	At the confluence with New Light Creek and West Prong	None	•294	Granville County (Unincorporated Areas).
	Approximately 300 feet upstream of Woodland Church Road.	None	•343	
New Light Creek	At the Granville/Wake County boundary	None	•283	Granville County (Unincorporated Areas).
	At the confluence with Mill Creek and West Prong	None	•294	
New Light Creek Tributary (Basin 3 Stream 8).	At the downstream Granville/Wake County boundary	None	•316	Granville County (Unincorporated Areas).
	At the upstream Granville/Wake County boundary	None	•358	
New Light Creek Tributary 4	At the Granville/Wake County boundary	None	•283	Granville County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the Granville/Wake County boundary.	None	•296	
North Fork Tar River	At the confluence with the Tar River	None	• 397	Granville County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence of North Fork Tar River Tributary 2.	None	• 468	
North Fork Tar River Tributary 1.	At the confluence with North Fork Tar River	None	• 397	Granville County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 2.9 miles upstream of the confluence with North Fork Tar River.	None	• 459	
North Fork Tar River Tributary 2.	At the confluence with North Fork Tar River	None	• 445	Granville County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Bodie Currin Road	None	• 458	
Owen Creek	At the confluence with the Tar River	None	• 387	Granville County (Unincorporated Areas).
	Approximately 2.1 miles upstream of Harper Renn Road	None	• 436	
Picture Creek	At Central Avenue Extension	None	• 283	Granville County (Unincorporated Areas).
	Approximately 0.7 miles upstream of the confluence with Picture Creek Tributary.	None	• 344	
Picture Creek Tributary	At the confluence with Picture Creek	None	• 319	Granville County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Picture Creek.	None	• 339	
Reedy Branch	At the confluence with Beaverdam Creek	None	• 271	Granville County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Country Lane	None	• 333	
Robertson Creek	At the confluence with Beaverdam Creek	None	• 262	Granville County (Unincorporated Areas)., City of Creedmoor
	Approximately 1.2 miles upstream of the confluence of Robertson Creek Tributary 2.	None	• 308	
Robertson Creek Tributary 1	At the confluence with Robertson Creek	None	• 262	Granville County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Dove Road	None	• 277	
Robertson Creek Tributary 2	At the confluence with Robertson Creek	None	• 295	Granville County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Moss Back Road	None	• 305	
Rocky Creek	At the confluence with the Tar River	None	• 384	Granville County (Unincorporated Areas).
	Approximately 2.9 miles upstream of James Royster Road.	None	• 431	
Shelton Creek	At the confluence with the Tar River	None	• 399	Granville County (Unincorporated Areas).
	Approximately 1,250 feet upstream of Goshen Road	None	• 529	
Smith Creek	At the confluence with Beaverdam Creek	None	• 262	Granville County (Unincorporated Areas).
	Approximately 2.3 miles upstream of Lawrence Road	None	• 371	
Syble Creek	At the Granville/Wake County boundary	None	• 262	Granville County (Unincorporated Areas).
	Approximately 0.8 mile upstream of US 15	None	• 304	
Tabbs Creek	Approximately 700 feet upstream of Tom Parham Road	None	• 419	Granville County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Tom Parham Road	None	• 426	
Tar River	At the downstream County boundary	None	• 245	Granville County (Unincorporated Areas).
	Approximately 225 feet upstream of the Granville/Person County boundary.	None	• 500	
Tar River Tributary 2	At the confluence with the Tar River	None	• 319	Granville County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Tom Hunt Road	None	• 330	
Tar River Tributary 3	At the confluence with Tar River	None	• 314	Granville County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Tar River Tributary 2.	None	• 334	
Tar River Tributary 4	At the confluence with the Tar River	None	• 449	Granville County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Gene Hobgood Road.	None	• 493	
West Prong	At the confluence with New Light Creek and Mill Creek	None	• 294	Granville County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Graham Sherron Road.	None	• 357	
West Prong Tributary	At the confluence with West Prong	None	• 305	Granville County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 650 feet upstream of Woodland Church Road.	None	• 356	
City of Creedmoor Maps available for inspection at the City of Creedmoor Planning and Zoning Office, 111 Masonic Street, Creedmoor, North Carolina. Send comments to The Honorable Darryl Moss, Mayor of the City of Creedmoor, P.O. Box 765, Creedmoor, North Carolina 27522. Maps available for inspection at the Granville County Planning Department, 122 Williamsboro Street, Oxford, North Carolina. Send comments to The Honorable Jack Day, Mayor of the Town of Stem, 113 Old NC 75N, Creedmoor, North Carolina 27522. **Unincorporated Areas of Granville County** Maps available for inspection at the Granville County Planning Department, 122 Williamsboro Street, Oxford, North Carolina. Send comments to Mr. J. Dudley Watts, Jr., Granville County Manager, P.O. Box 906, Oxford, North Carolina 27565.				
NORTH CAROLINA **Johnston County**				
Arters Branch	Approximately 0.6 mile upstream of the confluence with the Neuse River.	None	• 124	Town of Smithfield, Johnston County (Unincorporated Areas).
	Approximately 300 feet upstream of North Johnson Road	None	• 155	
Bawdy Creek	Approximately 1.3 mile upstream of the confluence with the Neuse River.	None	• 88	Johnston County (Unincorporated Areas).
	At the confluence of Bawdy Swamp and Quincosin Swamp.	None	• 110	
Bawdy Swamp	At the confluence of Bawdy Creek and Quincosin Swamp	None	• 110	Johnston County (Unincorporated Areas).
	Approximately 0.8 mile upstream of U.S. Route 70	None	• 160	
Beaverdam Branch	Approximately 0.5 mile upstream of the confluence with the Middle Creek.	• 172	• 173	Johnston County (Unincorporated Areas).
	Approximately 100 feet upstream of Raleigh Road	None	• 183	
Beaverdam Creek	At the Wayne/Johnston County boundary	None	• 124	Town of Princeton, Johnston County (Unincorporated Areas).
	Approximately 450 feet upstream of East Edwards Street	None	• 141	
Beaverdam Swamp	Approximately 0.3 mile upstream of the confluence with Hannah Creek.	• 128	• 129	Johnston County (Unincorporated Areas).
	Approximately 1,300 feet upstream of Tettersville Road	None	• 151	
Beddingfield Creek	Approximately 0.5 mile downstream of Wake/Johnston County boundary.	None	• 164	Johnston County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.0 mile downstream of the confluence with the Neuse River.	None	• 166	
Bernal Branch	Approximately 1,250 feet downstream of Interstate 95	• 128	• 129	Johnston County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Railroad	None	• 185	
	Approximately 0.5 mile upstream of Medlin Road	None	• 184	
Big Arm Creek	At the confluence of Marks Creek	None	• 163	Town of Clayton, Johnston County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Micro Road West	None	• 183	
Big Branch	At the confluence with Little River	•140	•141	Town of Micro, Johnson County (Unincorporated Areas)
Black Creek	Approximately 300 feet upstream of Highway 210	None	• 191	Johnston County (Unincorporated Areas).
	AAt the Wake/Johnston County boundary	None	• 213	
Black Creek Tributary	Approximately 1,750 feet upstream of the confluence with the Black Creek.	None	• 185	Johnston County (Unincorporated Areas).
	Approximately 2.5 mile upstream of the confluence with Black Creek.	None	• 212	
Buffalo Creek (East)	At the upstream side of N.C. 42	None	• 205	Johnston County (Unincorporated Areas).
	At the Wake/Johnston County boundary	None	• 246	
Bull Branch	At the confluence with Moccasin Creek	None	• 152	Johnston County (Unincorporated Areas).
	Approximately 2.3 miles upstream of the confluence with Moccasin Creek.	None	• 218	
Burnt Stocking Branch	At the confluence with Little Creek (near Micro)	None	• 139	Johnston County (Unincorporated Areas).
	Approximately 0.3 mile downstream of Interstate 95	None	• 169	
Camp Branch	Approximately 1,300 feet upstream of the confluence with Black Creek.	None	• 162	Johnston County (Unincorporated Areas).
	Approximately 0.3 feet upstream of Stephenson Road	None	• 177	
Cattail Creek	At the confluence with Little River	None	• 182	Johnston County (Unincorporated Areas).
	Approximately 900 feet upstream of Harris Wilson Road	None	• 274	
Cooper Branch	Approximately 0.2 mile upstream of Little Creek Church Road.	None	• 142	Johnston County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Little Creek Church Road.	None	• 144	
Dicks Branch	Approximately 2,000 feet upstream of the confluence with Black Creek.	158	• 159	Johnston County (Unincorporated Areas).
	Approximately 1,980 feet upstream of Zacks Mill Road	None	• 172	
Dismal Branch	At the confluence with Johnson Swamp	None	• 129	Johnston County (Unincorporated Areas).
	Approximately 300 feet downstream of Interstate 40	None	•149	
Great Swamp	At the Wayne/Johnston County boundary	None	•160	Johnston County (Unincorporated Areas).
	Approximately 150 feet upstream of the Wayne/Johnston County boundary.	None	•161	
Hannah Creek	Approximately 0.5 mile upstream of the confluence of Stony Fork.	None	•134	Town of Benson, Johnston County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Interstate 40	None	•168	
Hannah Creek Tributary 2	At the confluence with Hannah Creek	None	•147	Town of Benson, Johnston County (Unincorporated Areas).
	Approximately 500 feet upstream of Tarheel Road	None	•184	
Hardee Mill Branch	Approximately 1,900 feet upstream of the confluence with Black Creek.	None	•158	Johnston County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Benson Hardee Road.	None	•177	
Hogpen Branch	At the confluence with Bernal Branch	None	•136	Johnston County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Hummingbird Road	None	•152	
John K. Swamp	At the confluence with Mill Creek	None	•149	Johnston County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Holly Grove Road	None	•188	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
John K. Swamp Tributary	At the confluence with John K. Swamp	None	•186	Johnston County (Unincorporated Areas).
	Approximately 720 feet upstream of the confluence with John K. Swamp.	None	•187	
Johnson Swamp	At the confluence with Stone Creek	None	•121	Johnston County (Unincorporated Areas).
	Approximately 1,200 feet upstream of Highway 96	None	•172	
Johnson Swamp Tributary	At the confluence with Johnson Swamp	None	•146	Johnston County (Unincorporated Areas).
	Approximately 950 feet upstream of Highway 96	None	•169	
Jumping Run	At the confluence with Mill Creek	None	•158	Johnston County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Jumping Run Road	None	•191	
Juniper Swamp	Approximately 500 feet upstream of Webb Mill Road	None	•112	Town of Four Oaks, Johnston County (Unincorporated Areas).
	Approximately 1,650 feet upstream of Interstate 95	None	•158	
Juniper Swamp Tributary 1	At the confluence with Juniper Swamp	None	•119	Town of Four Oaks, Johnston County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence with Juniper Swamp.	None	•157	
Juniper Swamp Tributary 2	At the confluence with Juniper Swamp Tributary 1	None	•132	Town of Four Oaks, Johnston County (Unincorporated Areas).
	Approximately 350 feet downstream of Keen Road	None	•155	
Little Bernal Branch	At the confluence with Bernal Branch	None	•155	Johnston County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Bernal Branch.	None	•157	
Little Black Creek	At the confluence with Black Creek	None	•191	Johnston County (Unincorporated Areas).
	At the Wake/Johnston County boundary	None	•228	
Little Buffalo Creek	At the confluence with Little River	•146	•147	Johnston County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Meadow Road	None	•197	
Little Buffalo Creek Tributary	At the confluence with Little Buffalo Creek	None	•151	Town of Kenly, Johnston County (Unincorporated Areas).
	Approximately 100 feet downstream of Wilson/Johnston County boundary.	None	•169	
Little Creek	Approximately 0.6 mile upstream of Shotwell Road	None	•279	Town of Clayton, Johnston County (Unincorporated Areas).
	Approximately 0.6 mile downstream of the Wake/Johnston County boundary.	None	•320	
Little Creek (into Middle Creek).	Approximately 0.7 mile upstream of the confluence with Middle Creek.	None	•205	Johnston County (Unincorporated Areas).
	At the Wake/Johnston County boundary	None	•219	
Little Creek (Basin 11, Stream 2).	At the confluence with Moccasin Creek	None	•209	Johnston County (Unincorporated Areas).
	At the Wake/Johnston County boundary	None	•217	
Little Creek (near Micro)	Approximately 0.4 mile upstream of Bizzell Grove Church Road.	None	•124	Town of Micro, Johnston County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Hawkins Road	None	•184	
Little River	Approximately 0.6 mile upstream of Wayne/County boundary.	•107	•108	Town of Kenly, Town of Princeton, Town of Micro, Johnston County (Unincorporated Areas).
	At the Wake/Johnston County boundary	None	•216	
Little River Tributary	Approximately 0.3 mile upstream of the confluence with Little River.	None	•175	Johnston County (Unincorporated Areas).
	Approximately 0.4 mile upstream of N.C. 42	None	•213	
Little Swamp Branch	At the confluence with John K. Swamp	None	•168	Johnston County (Unincorporated Areas).
	Approximately 0.5 mile upstream of T Bar Road	None	•177	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Long Branch	Approximately 650 feet downstream of Shoeheel Road	• 157	• 158	Johnston County (Unincorporated Areas).
	Approximately 0.7 mile upstream of N.C. 96	None	• 212	
Marks Creek	Approximately 0.8 mile downstream of Pritchard Road	None	• 159	Town of Clayton, Johnston County (Unincorporated Areas).
	At the Wake/Johnston County boundary	None	• 176	
McCullens Branch	Approximately 0.7 mile upstream of the confluence with Black Creek.	None	• 162	Johnston County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Clayton Road	None	• 194	
Mill Creek	Approximately 0.7 mile upstream of the confluence of Stone Creek.	None	• 105	Johnston County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Godwin Lake Road	None	• 193	
Mill Creek (near Clayton)	At the confluence with the Neuse River	• 146	• 145	Town of Clayton, Johnston County (Unincorporated Area).
	Approximately 1.1 miles upstream of Motorcycle Road	None	• 202	
Mill Creek (near Selma)	Approximately 0.6 mile upstream of the confluence with the Neuse River.	None	• 131	Town of Selma, Johnston County (Unincorporated Areas).
	Approximately 1.4 miles upstream of River Road	None	• 165	
Mill Creek Tributary 2.	Approximately 0.6 mile upstream of the confluence with Mill Creek.	• 96	• 97	Johnston County (Unincorporated Areas).
	Approximately 300 feet upstream of Bentonville Road	None	• 138	
Mill Creek Tributary 3.	Approximately 0.5 mile upstream of the confluence with Mill Creek.	None	• 99	Johnston County (Unincorporated Areas).
	Approximately 0.4 mile of Shaws Pond Road	None	• 121	
Mill Creek Tributary 4.	At the confluence with Mill Creek	None	• 115	Johnston County (Unincorporated Areas).
	Approximately 1,980 feet upstream of Harper House Road.	None	• 146	
Mill Creek Tributary 5.	At the confluence with Mill Creek	None	• 122	Johnston County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Randall Chapel Road.	None	• 146	
Mill Creek Tributary 6.	Approximately 0.6 mile upstream of the confluence with Mill Creek.	• 96	• 97	Johnston County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Scout Road	None	• 129	
Mill Swamp Branch	At the confluence with John K. Swamp	None	• 163	Johnston County (Unincorporated Areas).
	Approximately 400 feet upstream of Holly Grove Road	None	• 182	
Moccasin Creek (near Princeton).	Approximately 0.4 mile upstream of U.S. Route 70	None	• 127	Town of Pine Level, Town of Princeton, Johnston County (Unincorporated Areas).
	Approximately 800 feet upstream of Railroad	None	• 140	
Moccasin Creek	At the Johnston/Wilson County boundary	None	• 152	Johnston County (Unincorporated Areas).
	At interstate 264	None	• 219	
Moccasin Creek Tributary 1	At the confluence with Moccasin Creek	None	•164	Johnston County (Unincorporated Areas).
	Approximately 0.5 mile upstream of N.C. 222	None	• 205	
Moccasin Creek Tributary 2	At the confluence with Moccasin Creek	None	• 166	Johnston County (Unincorporated Areas).
	Approximately 0.3 mile upstream of N.C. 222	None	• 214	
Oak Creek	At the confluence with Stone Creek	None	• 112	Johnston County (Unincorporated Areas).
	Approximately 1.1 miles upstream of White Oak Road	None	• 152	
Oak Creek Tributary	At the confluence with Oak Creek	None	• 116	Johnston County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Oak Creek.	None	• 133	
Pole Branch	At the confluence with Black Creek	• 147	• 148	Johnston County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Interstate 40	None	• 168	
Polecat Branch	Approximately 1.1 miles downstream of Brogden Road	• 112	• 113	Town of Smithfield, Johnston County (Unincorporated Areas).
	Approximately 2.2 miles upstream of Brogden Road	None	• 137	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Quincosin Swamp	At the confluence of Bawdy Creek and Bawdy Swamp	None	• 110	Johnston County (Unincorporated Areas).
	Approximately 2,000 feet downstream of U.S. Route 70	None	• 138	
Reedy Creek	At King Mill Road	None	• 140	Johnston County (Unincorporated Areas).
	Approximately 1.3 miles upstream of King Mill Road	None	• 163	
Reedy Prong	At the confluence with Mill Creek	None	• 139	Johnston County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Eldridge Road	None	• 152	
Reedy Prong Tributary	At the confluence with Reedy Prong	None	• 150	Johnston County (Unincorporated Areas).
	Approximately 200 feet upstream of Thornton Road	None	• 162	
Sams Creek	Approximately 0.7 mile upstream of the confluence with the Neuse River.	None	•155	Town of Clayton, Johnston County (Unincorporated Areas).
	Approximately 0.4 mile downstream of City Road	None	•210	
Snipes Creek	At the confluence with Little River	None	•204	Johnston County (Unincorporated Areas).
	At the Wake/Johnston County boundary	None	•285	
Spring Branch (into Little River).	At the upstream side of Princeton Kenly Road	None	•124	Johnston County (Unincorporated Areas).
	Approximately 200 feet downstream of Cuddington Road	None	•214	
Spring Branch Tributary	At the confluence with Spring Branch (into Little River)	None	•130	Johnston County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Rhodes Road	None	•211	
Stone Creek	Just upstream of U.S. Highway 701	None	•108	Johnston County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Interstate 40	None	•205	
Stone Creek Tributary	At the confluence with Stone Creek	None	•156	Johnston County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Adams Road	None	.185	
Stony Fork	Approximately 200 feet upstream of Railroad	None	•148	Johnston County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Shade Tree Road	None	•164	
Stony Fork Tributary	At the confluence with Stony Fork	None	•153	Johnston County (Unincorporated Areas).
	Approximately 300 feet upstream of Interstate 40	None	179	
	Approximately 300 feet upstream of Interstate 40	None	179	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Town of Benson
Maps available for inspection at the Benson Town Hall, Zoning Department, 303 East Church Street, Benson, North Carolina.
Send comments to The Honorable Don Johnson, Mayor of the Town of Benson, P.O. Box 69, Benson, North Carolina 27504.
Town of Clayton
Maps available for inspection at the Clayton Town Hall, Planning Department, 111 East 2nd Street, Clayton, North Carolina.
Send comments to Mr. Steve Biggs, Clayton Town Manager, P.O. Box 879, Clayton, North Carolina 27520.
Town of Four Oaks
Maps available for inspection at the Four Oaks Town Hall, 304 North Main Street, Four Oaks, North Carolina.
Send comments to The Honorable Jack Austin, Mayor of the Town of Four Oaks, P.O. Box 158, Four Oaks, North Carolina 27524.
Johnston County (Unincorporated Areas).
Maps available for inspection at the Johnston County Public Utilities Office, 309 East Market Street, Smithfield, North Carolina.
Send comments to Mr. Rick Hester, Johnston County Manager, P.O. Box 1049, Smithfield, North Carolina 27577.
Town of Micro
Maps available for inspection at the Micro Town Hall, 112 West Main Street, Micro, North Carolina.
Send comments to The Honorable Earl E. (Buddy Jones, Mayor of the Town of Micro, P.O. Box 31, Micro, North Carolina 27555.
Town of Pine Level
Maps available for inspection at the Pine Level Town Hall, 214 North Peedin Avenue, Pine Level, North Carolina.
Send comments to The Honorable Tony Braswell, Mayor of the Town of Pine Level, P.O. Box 328, Pine Level, North Carolina 27568.
Town of Princeton
Maps available for inspection at the Town of Princeton Public Utilities Office, 309 East Market Street, Princeton, North Carolina.
Send comments to The Honorable Donald Rains, Mayor of the Town of Princeton, P.O. Box 128, Princeton, North Carolina 27569.
Town of Selma
Maps available for inspection at the Town of Selma Planning Department, 100 North Raiford Street, Selma, North Carolina.
Send comments to The Honorable Harry Blackley, Mayor of the Town of Selma, 100 North Raiford Street, Selma, North Carolina 27576.
Town of Smithfield
Maps available for inspection at the Smithfield Town Hall, 350 East Market Street, Smithfield, North Carolina.
Send comments to The Honorable Bill Jordan, Mayor of the Town of Smithfield, 350 East Market Street, Smithfield, North Carolina 27577.
Town of Wilson's Mills
Maps available for inspection at the Wilson's Mills Town Hall, 22 Fire Department Road, Wilson's Mills, North Carolina.
Send comments to The Honorable Pattie Caddell, Mayor of the Town of Wilson's Mills, P.O. Box 448, Wilson's Mills, North Carolina 27593.

NORTH CAROLINA
Wayne County

Richland Creek	Approximately 200 feet upstream of the confluence with Stoney Creek.	•84	•85	City of Goldsboro, Wayne County (Unincorporated Areas).
	Approximately 650 feet upstream of Highway 70	None	•107	
Stoney Creek	At the confluence with the Neuse River	•70	•71	City of Goldsboro, Wayne County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence of Reedy Branch.	•89	•90	
Appletree Swamp	Approximately 500 feet downstream of the Wayne/Greene County boundary.	None	•86	Wayne County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the Wayne/Greene County boundary.	None	•99	
Aycock Swamp	At the Wayne/Wilson County boundary	None	•76	Town of Fremont, Wayne County
	Approximately 1.5 miles upstream of Black Creek Road	None	•113	(Unincorporated Areas).
Bear Creek	Approximately 0.2 mile downstream of the Wayne/Greene County boundary.	•75	•76	Wayne County (Unincorporated Areas).
	Approximatelhy 150 feet downstream of Rodell Barron Road.	None	•112	
Breverdam Creek	At the upstream side of Rosewood Road	None	•82	Wayne County (Unincorporated Areas).
	At the Wayne/Johnston County	None	•124	
Beaverdam Creek 1	At the confluence with Falling Creek	None	•133	Wayne County (Unincorporated Areas).
	Approximately 1.2 miles upstream of U.S. Route 13	None	•147	
Mill Creek North	Approximatley 0.8 mile upstream of the confluence with Little River.	•89	•88	Town of Pikeville, Wayne County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Pikeville Princeton Road.	None	•136	
Mill Creek North Tributary 1	At the confluence with Mill Creek North	None	•101	Wayne County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Mill Creek North.	None	•136	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Mill Creek North Tributary 2	At the confluence with Mill Creek North	None	•102	Wayne County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Hinnant Road	None	•134	
Mill Creek North Tributary 3	At the confluence with Mill Creek North	None	•111	Wayne County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Nahunta Road	None	•136	
Mill Creek North Tributary 4	At the confluence with Mill Creek North	None	•113	Town of Pikeville
	Approximately 540 feet upstream of Nahunta Road	None	•137	
Mill Creek North Tributary 5	At the confluence with Mill Creek North	None	•115	Town of Pikeville
	Approximately 0.3 mile upstream of Nahunta Road	None	•134	
Neuse River	At they Wayne/Lenoir County boundry	•53	•55	Town of Seven Springs, City of
	At the confluence with Mill Creek South	•83	•84	Goldsboro, Wayne County (Unincorporated Areas).
Bill Bud Creek	At the confluence with Stoney Creek	•89	•90	City of Goldsboro, Wayne
	Approximately 0.7 mile upstream of North Berkeley Bouelvard.	None	•118	County (Unincorporated Areas)
Buck Swamp	At the downstream side of Nor Am Road	None	•109	Wayne County (Unincorporated Areas).
	Approximately 300 feet upstream of Pikeville Princeton Road.	None	•135	
Button Branch	Approximatley 100 feet dowstream of Saulston Road	None	•69	Wayne County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the Wayne/Greene County boundary.	None	•70	
Charles Branch	Approximately 0.3 mile upstream of the confluence with Beaverdam Creek.	None	•82	Wayne County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with Beaverdam Creek.	None	•92	
Falling Creek	At the confleunce of the Neuse River	•83	•84	Wayne County (Unincorporated Areas).
	Approximately 850 feet upstream of South Jordans Chapel Road.	None	•137	
Great Swamp	Approximately 500 feet downstream of the Wayne/Wilson County boundary.	None	•97	Wayne County (Unincorporated Areas).
	At the Wayne/Johnston County boundary	None	•160	
Great Swamp Tributary a	At the Wayne/Wilson County boundary	None	•93	Town of Fremont, Wayne County (Unincorporated Areas).
	Approximatlely 1.6 miles upstream of the Wayne/Wilson County boundary.	None	•115	
Great Swamp Tributary 2	At the confluence with Great Swamp	None	•99	Town of Fremont, Wayne County
	Approximately 1.4 miles upstream of the confluence with Great Swamp.	None	•110	
Great Swamp Tributary 3	At the confluence with Great Swamp	None	•125	Wayne County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Atlantic Road	None	•156	
Great Swamp Tributary 4	At the confluence with Great Swamp	None	•129	Wayne County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Joe Morris Road	None	•138	
Howells Branch	approximately 850 feet upstream of East Patetown Road	None	•106	City of Goldsboro, Wayne County (Unincorporated Areas).
	Approximately 130 feet upstream of Tommys Road	None	•113	
Ivy Branch	At the Wayne/Wilson County boundary	None	68	Wayne County (Unincorporated Areas).
	Approximately 1.3 miles upstream of St. James Church Road.	None	•87	
Juniper Swamp	At the confluence with Great Swamp	None	• 103	Wayne County (Unincorporated Areas).
	Approximately 0.2 mile upstream of the confluence with White Oak Swamp.	None	• 117	
Lee Branch	Approximately 200 feet upstream of McKee Oil Company Road.	None	• 142	Town of Mount Olive, Wayne County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Hatchs Hill Lane	None	• 148	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Mills Creek	Approximately 0.2 mile upstream of Highway 13	None	• 115	City of Goldsboro, Wayne County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Highway 13	None	• 124	
Nahunta Swamp	At State Highway 581	None	• 124	Wayne County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Old Kenley Road	None	• 136	
Nahunta Swamp Tributary	Approximately 1,500 feet upstream of the confluence with Nahunta Swamp.	None	• 88	Wayne County (Unincorporated Areas).
	Approximately 0.3 mile upstream of St. Highway 222	None	• 108	
Stoney Creek Tributary	Approximately 100 feet upstream of Stoney Creek Church Road.	None	• 109	Wayne County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Stoney Creek Church Road.	None	• 113	
Thorough Fare Swamp	Downstream side of Grantham School Road	None	• 123	Wayne County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Odom Mill Road	None	• 152	
Thunder Swamp	At the downstream side of Old Smith Chapel Road	None	• 137	Town of Mount Olive, Wayne County (Unincorporated Areas).
	At the upstream side of Daughery Field Road	None	• 160	
Thunder Swamp Tributary	The upstream side of Highway 55	None	• 150	Town of Mount Olive, Wayne County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Highway 55	None	• 157	
Turner Swamp	At the Wayne/Wilson County boundary	None	• 77	Town of Eureka, Wayne County (Unincorporated Areas).
	Approximately 0.4 mile downstream of North Church Street.	None	• 104	
Walnut Creek	At the confluence with the Neuse River	• 58	• 60	City of Goldsboro, Village of Walnut Creek, Wayne County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Miller Chapel Road	None	• 116	
Walnut Creek Tributary D	At the confluence with Walnut Creek	None	• 98	Wayne County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Powell Road	None	• 105	
Watery Branch	Approximately 250 feet downstream of the Wayne/Greene County boundary.	None	• 73	Town of Eureka, Wayne County (Unincorporated Areas).
	Approximately 2.5 miles upstream of Old Mill Road	None	• 108	
Yellow Marsh Branch	Approximately 180 feet upstream of railroad	None	• 155	Wayne County (Unincorporated Areas).
	Approximately 0.3 mile upstream of railroad	None	• 157	
White Oak Swamp	At the confluence with Juniper Swamp	None	• 113	Wayne County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Juniper Swamp	None	• 122	
Contentnea Creek	Approximately 0.8 mile upstream of Highway 58	None	• 62	Wayne County (Unincorporated Areas).
	At the downstream side of Highway 222	None	• 64	
Mill Creek (South)	At the confluence with the Neuse River	• 84	• 83	
	Approximately 800 feet upstream of the confluence with the Neuse River.	• 84	• 83	Wayne County (Unincorporated Areas).
Reedy Branch	At the confluence of Stoney Creek	• 89	• 90	City of Goldsboro, Wayne County (Unincorporated Areas).
	Approximately 2,500 feet upstream of the confluence with Stoney Creek.	• 89	• 90	
Big Ditch	At the confluence with the Neuse River	• 73	• 74	City of Goldsboro
	Approximately 0.3 mile upstream of U.S. Highway 70	None	• 119	
Little River	At the confluence with Neuse River	• 73	• 74	City of Goldsboro
	Approximately 0.3 mile upstream of Stevens Mill Road	• 74	• 75	
Burden Creek	At the confluence with Moccasin Creek	• 83	• 84	Wayne County (Unincorporated Areas).
	Approximately 750 feet upstream of the confluence with Moccasin Creek.	• 83	• 84	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Moccasin Creek	At the confluence with the Neuse River	• 83	• 84	Wayne County (Unincorporated Areas).
	At the Johnston/Wayne County boundary	• 83	• 84	
Sleepy Creek	At the confluence with the Neuse River	• 62	• 65	Wayne County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with the Neuse River.	• 62	• 65	
Town of Eureka				
Maps available for inspection at the Eureka Town Hall, 103 West Main Street, Eureka, North Carolina.				
Send comments to The Honorable Randy Bass, Mayor of the Town of Eureka, P.O. Box 3150, Eureka, North Carolina 27830.				
Maps available for inspection at the Fremont Town Hall, 202 North Goldsboro Street, Fremont, North Carolina.				
Send comments to The Honorable Floyd A. Evans, Mayor of the Town of Fremont, P.O. Box 818, Fremont, North Carolina, 27830.				
City of Goldsboro				
Maps available for inspection at the City of Goldsboro Engineering Department, 222 North Center Street, Goldsboro, North Carolina.				
Send comments to Mr. Richard M. Slozak, Goldsboro City Manager, P.O. Drawer A. Goldsboro, North Carolina 27530.				
Town of Pikesville				
Maps available for inspection at the Pikesville Town Hall, 112 Southwest Railroad Street, Pikesville, North Carolina.				
Send comments to The Honorable Tony Medlin, Mayor of the Town of Pikeville, P.O. Box 9, Pikeville, North Carolina, 27863.				
Town of Seven Springs				
Maps available for inspection at the Seven Springs Town Hall, 508 Church Street, Seven Springs, North Carolina.				
Send comments to The Honorable Jewel Kilpatrick, Mayor of the Town of Seven Springs, P.O. Box 198, Seven Springs, North Carolina 28578.				
Unincorporated Areas of Wayne County				

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Maps available for inspection at the Wayne County Planning Department, 224 East Walnut Street, Goldsboro, North Carolina. Send comments to Mr. Lee Smith, Wayne County Manager, P.O. Box 227, Goldsboro, North Carolina 27533–0227. **Village of Walnut Creek** Maps available for inspection at the Walnut Creek County Club, 508 Lake Shore Drive, Goldsboro, North Carolina. Send comments to The Honorable Ken Ritt, Mayor of the Village of Walnut Creek, P.O. Box 10911, Goldsboro, North Carolina 27534.				
PENNSYLVANIA **Lycoming County**				
Gregs Run	Approximately 523 feet upstream of the confluence with Sugar Run.	*561	*560	Township of Wolf.
	Approximately 75 feet downstream of Gregs Run Road (Township Route 270).	*575	*574	
Mill Creek No. 2	Approximately 150 feet upstream of State Route 87	*544	*543	Township of Fairfield.
	Approximately 1,750 feet upstream of State Route 87	*550	*549	

Township of Fairfield

Maps available for inspection at the Fairfield Township Office, 238 Fairfield Church Road, Montoursville, Pennsylvania.

Send comments to Mr. Robert Wein, Chairman of the Township of Fairfield Board of Supervisors, 141 Signal Hill Road, Montoursville, Pennsylvania 17754.

Township of Wolf

Maps available for inspection at the Wolf Township Office, 695 Route 405 Highway, Hughesville, Pennsylvania.

Send comments to Mr. Gene M. Cahn, Chairman of the Township of Wolf Board of Supervisors, 695 Route 405 Highway, Hughesville, Pennsylvania 17737.

(Catalogue of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 18, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–164 Filed 1–5–04; 8:45 am]

BILLING CODE 9110–12–M?≤

Proposed Rules

Federal Register
Vol. 69, No. 3
Tuesday, January 6, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7443]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E. Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. + Elevation in feet (NGVD)	
				Existing	Modified
California	Oakdale (City), Stanislaus County.	Stanislaus River	Approximately 4,700 feet downstream of State Highway 120.	*101	*101
			Approximately 2 miles upstream of State Highway 120.	*113	*114

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. + Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the Community Development Department, 455 South Fifth Avenue, Oakdale, California 95361 or the Stanislaus County Library (Oakdale Branch) 151 South First Avenue, Oakdale, California 95361. Send comments to The Honorable Pat Kuhn, Mayor, City of Oakdale, 280 North Third Avenue, Oakdale, California 95361.					
California	Riverbank (City), Stanislaus County.	Stanislaus River	Approximately 4,800 feet downstream of Riverbank Highway.	None	*84
			Approximately 4,000 feet upstream of Riverbank Highway.	None	*87
Maps are available for inspection at City Hall, 6707 Third Street, Riverbank, California 95367. Send comments to The Honorable William O'Brien, Mayor, City of Riverbank, 6707 Third Street, Riverbank, California 95367.					
California	Stanislaus County	Stanislaus River	Approximately 5 miles downstream of State Highway 99.	None	*45
			Approximately 1,600 feet upstream of Orange Blossom Road.	*132	*131
Maps are available for inspection at 1010 10th Street, Suite 6500, Modesto, California 95354. Send comments to The Honorable Ray Simon, Chairman, Stanislaus County Board of Supervisors, 1010 10th Street, Suite 6500, Modesto, California 95354.					
Montana	Fort Peck Assionboine and Sioux Tribes.	Big Muddy Creek	At confluence with Missouri River	None	+1,914
			Approximately 2 miles upstream of State Route 258 bridge.	None	+1,965
		Missouri River	Approximately 8 miles downstream of confluence with Big Muddy Creek.	None	+1,910
			Approximately 2,000 feet upstream of the confluence with Milk River.	None	+2,032
		Poplar River	At confluence with Missouri River	None	+1,955
			Approximately 1,200 feet downstream of confluence with West Fork Poplar River.	None	+2,191
		Porcupine Creek	Approximately 3,600 feet downstream of U.S. Highway 2.	None	+2,058
			Approximately 5 miles downstream of Midway Dam at the boundary of Section 26 and 35 Township 32 North Range 40 East.	None	+2,575
Maps are available for inspection at 501 Medicine Bear Road, Poplar, Montana 59255. Send comments to The Honorable John Morales, Jr., Chairman, Fort Peck Tribal Council, P.O. Box 1027, Poplar, Montana 59255.					
Washington	Chelan County	Wenatchee River	Approximately 100 feet upstream of Old Monitor Road.	*717	*717
			Approximately 1.7 miles upstream of Main Street.	*1,044	*1,046
Maps are available for inspection at the Department of Public Works, 350 Orondo Street, Wenatchee, Washington 98801. Send comments to The Honorable Ron Walter, Chairman, Chelan County Board of Commissioners, 350 Orondo Street, Wenatchee, Washington 98801.					
Washington	Cashmere (City), Chelan County.	Wenatchee River	Approximately 1,300 feet downstream of Cottage Avenue.	*755	*756
			Approximately 1,550 feet upstream of Cottage Avenue.	*762	*763
Maps are available for inspection at the City Hall, 101 Woodring Street, Cashmere, Washington 98815. Send comments to The Honorable Gordon K. Irle, Mayor, City of Cashmere, 101 Woodring Street, Cashmere, Washington 98815.					

Flooding source(s)	Location of referenced elevation	Elevation in feet * (NGVD) Elevation in feet + (NAVD)		Communities affected
		Effective	Modified	
Blaine County, and Incorporated Areas Montana				
Milk River	Approximately 3 miles upstream of confluence with Peoples Creek.	None	+2,299	Blaine County (Uninc. Areas) and
	Approximately 3.8 miles upstream of Kennedy Road	None	+2,361	Fort Belknap Indian Reservation

Flooding source(s)	Location of referenced elevation	Elevation in feet * (NGVD) Elevation in feet + (NAVD)		Communities affected
		Effective	Modified	
Peoples Creek	At confluence with Milk River	None	+2,296	Blaine County (Uninc. Areas) and Fort Belknap Indian Reservation
	Approximately 1,500 feet upstream of Road Bridge	None	+2,339	
Peoples Creek Split Flow	Approximately 6,200 feet upstream of confluence with Dodson South Canal.	None	+2,285	Fort Belknap Indian Reservation
	At divergence from Peoples Creek	None	+2,321	
Little Peoples Creek	Approximately 2,600 feet downstream of convergence of Little Peoples Creek Split Flow.	None	+3,453	Fort Belknap Indian Reservation
	Approximately 3,000 feet upstream of St. Pauls Mission Road.	None	+3,709	
Little Peoples Creek Split Flow.	At confluence with Little Peoples Creek	None	+3,489	Fort Belknap Indian Reservation
	At divergence from Little Peoples Creek	None	+3,526	

ADDRESSES

Fort Belknap Indian Reservation

Maps are available for inspection at the Tribal Office Building, Highway 2 & Route 66, Harlem, Montana 59526.

Send comments to the Honorable Benjamin Speakthunder, Tribal Council President, Rural Route 1, Box 66, Harlem, Montana 59526.

Unincorporated Areas Blaine County

Maps are available for inspection at the County Courthouse, 400 Ohio Street, Chinook, Montana 59523.

Send comments to the Honorable Don Swenson, Chairman, Blaine County Board of Commissioners, 400 Ohio Street, Chinook, Montana 59523.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 24, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–165 Filed 1–5–04; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–4035, MB Docket No. 03–258, RM–10833]

Radio Broadcasting Services; Newcastle and Pine Haven, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Michael Radio Group, licensee of Station KRKI(FM), Channel 258A, Newcastle, Wyoming, proposing the substitution of Channel 258C0 for Channel 258A at Newcastle, Wyoming and the modification of the license for Station KRKI(FM) accordingly. The FM Table of Allotments has not been amended to reflect the grant of a license application for Station KRKI(FM) to specify operation on Channel 258A in lieu of Channel 257A at Newcastle, Wyoming (BLH–20030117AAS). This action constitutes an editorial change in the FM Table of Allotments. Moreover, we find for good cause that a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b)(A) and (B). Channel 258C0 can be allotted to Newcastle, Wyoming, in compliance with the minimum distance separation requirement of the Commission's Rules, provided there is a site restriction 36.5 kilometers (22.7 miles) east of the community. The reference coordinates for Channel 258C0 at Newcastle are 43–52–10 NL and 103–45–04 WL. To accommodate the allotment at Newcastle, we shall also propose the substitution of Channel 260A for vacant Channel 259A at Pine Haven, Wyoming. Channel 260A can be allotted to Pine Haven, in compliance with the minimum distance separation requirement of the Commission's Rules at city reference coordinates. The reference coordinates for Channel 260A at Pine Haven are 44–21–28 NL and 104–48–36 WL. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 258C0 at Newcastle, Wyoming or require Petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 17, 2004, and reply comments on or before March 3, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Michael Radio Group, c/o A. Wray Fitch III, Gammon and Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, Virginia 22101–3807.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. adopted December 18, 2003, and released December 23, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 257A and by adding Channel 258C0 at Newcastle and by removing Channel 259A and by adding Channel 260A at Pine Haven.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–108 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–4034; MB Docket No. 03–257, RM–10814]

Radio Broadcasting Services; Hartford and South Haven, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition for rule making filed by WSJM, Inc. proposing (1) the reallotnent of Channel 279A from Hartford to South Haven, Michigan, and the modification Station WZBL(FM)'s license accordingly; and (2) the reallotment of Channel 252A from South Haven to Hartford, Michigan, and the modification of Station WCSY–FM's license accordingly. Channel 279A can be reallotted to South Haven in compliance with the Commission's minimum distance separation requirements at Station WZBL(FM)'s presently licensed site. The coordinates for Channel 279A at South Haven are 42–18–02 North Latitude and 86–15–03 West Longitude. *See* SUPPLEMENTARY INFORMATION, *infra.*

DATES: Comments must be filed on or before February 17, 2004, reply comments on or before March 3, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Paul A. Cicelski, Esq., Shaw Pittman, LLP, 2300 N Street, NW., Washington, DC 20037 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–257, adopted December 18, 2003, and released December 23, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals, II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Additionally, Channel 252A can be reallotted to Hartford at petitioner's requested site without the imposition of a site restriction. The coordinates for Channel 252A at Hartford are 42–24–00 North Latitude and 86–16–20 West Longitude. Since Hartford and South Haven are located within 320 kilometers (200 miles) of the U.S. Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 279A at South Haven, Michigan, or the use of Channel 252A at Hartford, Michigan, or require petitioner to provide an equivalent class channels for the use of other interested parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 279A and by adding Channel 252A at Hartford; by removing Channel 252A and by adding Channel 279A at South Haven.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–109 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3919, Docket No. 02–252, RM–10316]

Radio Broadcasting Services; Rocksprings, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Rocksprings, Texas. The Audio Division had requested comment on a petition filed by Katherine Pyeatt, proposing the allotment of Channel 263A at Rocksprings, Texas. *See* 67 FR 57,203, September 9, 2002. Petitioner filed comments supporting the requested allotment, but subsequently submitted a request for dismissal of her proposal. This document dismisses the petition for failure to demonstrate a continuing interest in the requested allotment. The document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–252,

adopted December 12, 2003, and released December 16, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–114 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3921, Docket No. 03–70, RM–10670]

Radio Broadcasting Services; Knoxville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Knoxville, Illinois. The Audio Division had requested comment on a petition filed by Paul Christensen, proposing the allotment of Channel 291A at Knoxville, Illinois. *See* 68 FR 15,140, March 28, 2002. Petitioner did not file comments supporting the requested allotment. This document dismisses the petition for failure to demonstrate a continuing interest in the requested allotment. The document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–70, adopted December 12, 2003, and released December 16, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–115 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3923, Docket No. 02–250, RM–10549]

Radio Broadcasting Services; Las Animas, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Las Animas, Colorado. The Audio Division had requested comment on a petition filed by Sierra Grande Broadcasting, proposing the allotment of Channel 234C1 at Las Animas, Colorado. *See* 67 FR 57203, September 9, 2002. Petitioner did not file comments supporting the requested allotment. This document dismisses the petition for failure to demonstrate a continuing interest in the requested allotment. The document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–368, adopted December 12, 2003, and released December 16, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–116 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3920, Docket No. 03–71, RM–10665]

Radio Broadcasting Services; Nantucket, Massachusetts.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Nantucket, Massachusetts. The Audio Division had requested comment on a petition filed by Paul Christensen, proposing the allotment of Channel 249A at Nantucket, Massachusetts. *See* 68 FR 15,140, March 28, 2002. Petitioner did not file comments supporting the requested allotment. This document dismisses the petition for failure to demonstrate a continuing interest in the requested allotment. The document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–71, adopted December 12, 2003, and released December 16, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–117 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031218322–3322–01; I.D. 111903A]

RIN 0648–AR73

Fisheries of the Exclusive Economic Zone off Alaska; Skates Management in the Groundfish Fisheries of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 63 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 63, if approved, would move skates from the ''other species'' list to the ''target species'' list in the FMP. By listing skates as a target species, a directed fishery for skates in the Gulf of Alaska (GOA) may be managed to reduce the potential for overfishing skates. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments must be received by February 20, 2004.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 420 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments may also be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the GOA are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq*. Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendment 63 for review by the Secretary of Commerce, and a Notice of Availability of the FMP amendment was published in the **Federal Register** on December 2, 2003 (68 FR 67390), with comments on the FMP amendment invited through February 2, 2004.

Comments may address the FMP amendment, the proposed rule, or both, but must be received by February 2, 2004, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

Background

Amendment 63 is intended to respond to concerns that the rapidly developing skate fishery in the GOA may result in overfishing of skates. Amendment 63 to the FMP would move skates from the ''other species'' list to the ''target species'' list, allowing for the management of skates as a target species. Skates currently are managed as part of the other species complex with sharks, sculpins, octopus, and squid. The total allowable catch limit (TAC) for this complex is five percent of the aggregate of all TACs for groundfish of the GOA. Target species TACs are established for an individual species or species group and NMFS manages the directed fishery for each species to avoid exceeding the specified TACs. TACs usually are set at or below the acceptable biological catch (ABC) amount, which are below the overfishing levels (OFLs) for each target species or species group. The other species complex does not have an OFL or ABC amount due to the lack of biomass information for most of the species in the complex.

In 2003, a directed fishery for skates rapidly developed in the GOA. The 2003 skate harvest was 3,042 metric tons (mt), compared to 782 mt of skates harvested in 2002. Because skates are managed within the other species complex, the full TAC for the other species complex is available for a directed fishery for skates.

To reduce the potential for overfishing, the Council recommended that skates be managed as a target species. As a target species, OFL, ABC, and TAC amounts for skates would be established by annual harvest specifications, allowing for more effective management of skates based on the best available scientific information. The development of OFL, ABC, and TAC amounts for the 2004 harvest specifications for skates would be based on scientific survey and harvest information from 2003 and prior years. Managing a directed fishery for skates so that OFL, ABC, and TAC amounts are not exceeded would reduce the potential for overfishing and would meet the conservation objectives of the Magnuson-Stevens Act.

This action proposes to implement Amendment 63. This action also would revise Table 10 of 50 CFR 679 to establish maximum retainable amounts (MRAs) of skates in other directed groundfish fisheries and to establish MRAs for other target groundfish in the directed fishery for skates. The listing of species groups under footnote 7 to the table for the other species complex would be revised to remove skates from the listing. A footnote 11 would be added to the MRAs column and row for skates to identify the managed skate species and the reporting codes. These changes are necessary to properly manage the retention of skates incidentally caught in other directed groundfish fisheries and the retention of other groundfish taken incidentally in the directed fishery for skates.

The definition of other species in the regulations also would be revised to reference 50 CFR 679.20(e) for Tables 10 and 11 instead of 50 CFR 679.20(c), which does not apply to Tables 10 and 11.

Classification

NMFS has not yet determined whether the amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) which describes any adverse impacts this proposed rule, if adopted, would have on directly regulated small entities. Because this action is closely linked to the annual harvest specifications, the EA/RIR/IRFA (see **ADDRESSES**) prepared for this action also analyzes the action to establish annual harvest specifications for the groundfish fisheries of the BSAI and GOA. The IRFA identifies two FMP change alternatives (no action and move skates

to the target list), and three specifications options that may be considered with the action alternative. The specification options will be further analyzed and considered in separate rulemaking for the annual harvest specifications to be completed in early 2004. A summary of the IRFA, as it pertains to this action, follows:

Amendment 63 amends the GOA FMP by moving skate species from the ''other species'' list and adding it to the ''target species'' list. Skates would receive their own OFL, ABC, and TAC. This action is proposed to give fishery managers better tools to protect the skate biomass in the face of a directed fishery that developed rapidly in 2003.

The objective of this action is to increase the control managers have over the fishing mortality of skates, to prevent overfishing of skates, to maintain healthy skate stocks, and to make a sustainable fishery for skates more likely.

The legal basis for this action is found in the Magnuson-Stevens Act and in the GOA groundfish FMP promulgated pursuant to that act.

The IRFA for this action ascertained that 933 hook-and-line catcher vessels, 15 hook-and-line catcher-processors, 117 trawl catcher vessels, and four trawl catcher-processors, might be directly regulated by this action. All of these vessels are considered ''small entities'' as defined by the RFA. In 2001, average Alaskan groundfish revenues for the small entities were $70,000 for hook-and-line catcher vessels, $1.83 million for hook-and-line catcher-processors, $350,000 for trawl catcher vessels, and $1.8 million for trawl catcher-processors.

This action has the potential to limit harvests and fishery gross revenues in the short run to protect the biomass and preserve the fishery for the long term. The actual impacts would depend on the way the Council chooses to incorporate skates into the specifications, and on the annual specifications recommendations made by the Council.

Nothing in the proposed action would result in changes in reporting or recordkeeping requirements.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

The IRFA evaluated a no-action alternative to the preferred alternative. Under this no-action alternative, skates would have remained in the ''other species'' list. Since the ''other species'' complex TAC in 2003 (11,260 mt) is larger than the projected OFL for skates indicated in the EA (10,322 mt), harvest in a targeted skate fishery could drive down the skate biomass and reduce its reproductive potential. While revenues from the fishery would be higher in the short run, they would be lower in the longer run, as a reduced biomass supports a smaller (or perhaps no) commercial skate fishery. Thus, while this alternative may have imposed fewer short run restrictions on small fishing operations, it did not meet the objectives of providing protection to the skate stocks in the GOA and thereby protecting the future of a sustainable fishery.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 30, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.2, the definition ''Other species'' is revised to read as follows:

§ 679.2 Definitions.

* * * * *

Other species is a category that consists of groundfish species in each management area that are not specified as target species (see Tables 10 and 11 to this part pursuant to § 679.20(e)).

* * * * *

3. Table 10 to part 679 is revised to read as follows:

BILLING CODE 3510–22–S

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES														
Code	Species	Pollock	Pacific cod	DW flat [2]	Rex sole	Flathead sole	SW flat [3]	Arrowtooth	Sablefish	Aggregated rockfish[8]	SR/RE ERA [1]	DSR SEO [6]	Atka mackerel	Aggregated forage fish [10]	Skates [11]	Other species [7]
110	Pacific cod	20	na[9]	20	20	20	20	35	1	5	[1]	10	20	2	20	20
121	Arrowtooth	5	5	0	0	0	0	na[9]	0	0	0	0	0	2	0	0
122	Flathead sole	20	20	20	20	na[9]	20	35	7	15	7	1	20	2	20	20
125	Rex sole	20	20	20	na[9]	20	20	35	7	15	7	1	20	2	20	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
152/151	Shortraker/rougheye [1]	20	20	20	20	20	20	35	7	15	na[9]	1	20	2	20	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	[1]	10	na[9]	2	20	20
270	Pollock	na[9]	20	20	20	20	20	35	1	5	[1]	10	20	2	20	20
710	Sablefish	20	20	20	20	20	20	35		15	7	1	20	2	20	20
Flatfish, deep water [2]		20	20	na[9]	20	20	20	35	7	15	7	1	20	2	20	20
Flatfish, shallow water [3]		20	20	20	20	20	na[9]	35	1	5	[1]	10	20	2	20	20
Rockfish, other [4]		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, pelagic [5]		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, DSR-SEO [6]		20	20	20	20	20	20	35	7	15	7	na[9]	20	2	20	20
Skates[11]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	na[9]	20
Other species [7]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	20	na[9]
Aggregated amount of non-groundfish species		20	20	20	20	20	20	35	1	5	[1]	10	20	2	20	20

Notes to Table 10 to Part 679				
1	Shortraker/rougheye rockfish			
		SR/RE	shortraker/rougheye rockfish (171)	
			shortraker rockfish (152)	
			rougheye rockfish (151)	
		SR/RE ERA	shortraker/rougheye rockfish in the Eastern Regulatory Area.	
	Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish			
2	Deep-water flatfish	Dover sole, Greenland turbot, and deep-sea sole		
3	Shallow water flatfish	Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder		
4	Other rockfish	Western Regulatory Area	means slope rockfish and demersal shelf rockfish	
		Central Regulatory Area		
		West Yakutat District		
		Southeast Outside District	means slope rockfish	
		Slope rockfish		
		S. aurora (aurora)	S. variegatus (harlequin)	S. brevispinis (silvergrey)
		S. melanostomus (blackgill)	S. wilsoni (pygmy)	S. diploproa (splitnose)
		S. paucispinis (bocaccio)	S. babcocki (redbanded)	S. saxicola (stripetail)
		S. goodei (chilipepper)	S. proriger (redstripe)	S. miniatus (vermilion)
		S. crameri (darkblotch)	S. zacentrus (sharpchin)	S. reedi (yellowmouth)
		S. elongatus (greenstriped)	S. jordani (shortbelly)	
		In the Eastern GOA only, Slope rockfish also includes S. polyspinous. (Northern)		
5	Pelagic shelf rockfish	S. ciliatus (dusky)	S. entomelas (widow)	S. flavidus (yellowtail)
6	Demersal shelf rockfish (DSR)	S. pinniger (canary)	S. maliger (quillback)	S. ruberrimus (yelloweye)
		S. nebulosus (china)	S. helvomaculatus (rosethorn)	
		S. caurinus (copper)	S. nigrocinctus (tiger)	
		DSR-SEO = Demersal shelf rockfish in the Southeast Outside District		

7	Other species	sculpins	octopus	sharks	squid
8	Aggregated rockfish	means rockfish of the genera Sebastes and Sebastolobus defined at § 679.2 except in:			
		Southeast Outside District (SEO)	where DSR is a separate category for those species marked with a numerical percentage		
		Eastern Regulatory Area (ERA)	where SR/RE is a separate category for those species marked with a numerical percentage		
9	N/A	not applicable			
10	Aggregated forage fish (all species of the following families)				
		Bristlemouths, lightfishes, and anglemouths (family Gonostomatidae)			209
		Capelin smelt (family Osmeridae)			516
		Deep-sea smelts (family Bathylagidae)			773
		Eulachon smelt (family Osmeridae)			511
		Gunnels (family Pholidae)			207
		Krill (order Euphausiacea)			800
		Laternfishes (family Myctophidae)			772
		Pacific herring (family Clupeidae)			235
		Pacific Sand fish (family Trichodontidae)			206
		Pacific Sand lance (family Ammodytidae)			774
		Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family Stichaeidae)			208
		Surf smelt (family Osmeridae)			515
11	Skates Species and Groups				
		Big Skates (702)			
		Longnose Skates (701)			
		Other Skates (700)			

[FR Doc. 04–229 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 69, No. 3

Tuesday, January 6, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 2004

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii, as authorized by the William F. Goodling Child Nutrition Reauthorization Act of 1998.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

In accordance with Section 13 of the National School Lunch Act (NSLA)(42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP in 2004. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 2002 through November 2003.

Section 104(a) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) amended section 12(f) of the NSLA (42 U.S.C. 1760(f)) to allow adjustments to SFSP reimbursement rates to reflect the higher cost of providing meals in the SFSP in Alaska and Hawaii. Therefore, this notice contains adjusted rates for Alaska and Hawaii. This change was made in an effort to be consistent with other Child Nutrition Programs, such as the National School Lunch Program and the School Breakfast Program, which already had the authority to provide higher reimbursement rates for programs in Alaska and Hawaii.

The 2004 reimbursement rates, in dollars, for all States excluding Alaska and Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALL STATES (NOT AK OR HI)

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.38	$.1375	$.1075
Lunch or Supper	2.41	.2525	.2100
Supplement	.56	.0675	.0550

The 2004 reimbursement rates, in dollars, for Alaska:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$2.24	$.2225	$.1750
Lunch or Supper	3.90	.4075	.3375

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY—Continued

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Supplement	.91	.1100	.0875

The 2004 reimbursement rates, in dollars, for Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR HAWAII ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.61	$.1600	$.1275
Lunch or Supper	2.82	.2950	.2450
Supplement	.65	.0800	.0625

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, for both operating and administrative reimbursement rates, represent a 2.2 percent increase during 2003 (from 179.8 in November 2002 to 183.8 in November 2003) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department would like to point out that the SFSP administrative reimbursement rates continue to be adjusted up or down to the nearest quarter-cent, as has previously been the case. Additionally, operating reimbursement rates have been rounded down to the nearest whole cent, as required by section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759 (a)(3)(B)).

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

Dated: December 30, 2003.

Roberto Salazar,

Administrator.

[FR Doc. 04–187 Filed 1–5–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Catron County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Catron County Resource Advisory Committee will meet in Reserve, New Mexico, on January 27, 2004, at 10 a.m. m.s.t. The purpose of the meeting is to discuss use of project proposal form, establish process for project submission, evaluate submitted projects and select projects for recommendation.

DATES: The meeting will be held January 27, 2004.

ADDRESSES: The meeting will be held at the Catron County Courtroom of the Catron County Court House, 101 Main Street, Reserve, New Mexico 87830. Send written comments to Michael Gardner, Catron County Resource Advisory Committee, c/o Forest Service, USDA, 3005 E. Camino del Bosque, Silver City, New Mexico 88061–7863 or electronically to *mgardner01@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michael Gardner, Rural Community Assistant Staff, Gila National Forest, (505) 388–8212.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members unless provided for on the agenda. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee may file written statements with the Committee Staff before or after the meeting. Public input sessions will be provided and individuals may address the committee at times provided on the agenda in the morning and afternoon.

Dated: December 30, 2003.

Marcia R. Andre,

Forest Supervisor, Gila National Forest.

[FR Doc. 04–184 Filed 1–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on January 12, 2004, at 6:30 p.m. in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: January 12, 2004.

ADDRESSES: The meeting will be held at the Forest Supervisor's Office, 1101 US Highway 2 West, Libby.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include discussion on field trips for 2004, revision of the project proposal form and develop a priority list of types of projects to be considered for funding. If the meeting date or location is changed, notice will be posted in the

local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: December 29, 2003.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 04–185 Filed 1–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting

AGENCY: Notice of Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Tuesday, January 20th, in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on January 20, begins at 6:30 p.m., at the U.S. Forest Service, Bearlodge Ranger District office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include: Updates on previously funded projects and a review of proposals still needing action. A public forum will begin at 8:30 p.m. (m.t.).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: December 17, 2003.

Scott Tangenberg,

Bearlodge District Ranger.

[FR Doc. 04–246 Filed 1–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: On January 22, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 3009) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from Argentina. The period of review (POR) is May 11, 2001, to November 30, 2002.

We preliminarily determine that sales of honey from Argentina have been made below the normal value (NV) in the cases of Nexco S.A. and Seylinco S.A. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

EFFECTIVE DATE: January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall for Nexco S.A. (Nexco), David Cordell for TransHoney S.A. (TransHoney), Brian Sheba for (HoneyMax S.A. (HoneyMax) and Seylinco S.A. (Seylinco)), Angela Strom for (Asociacion de Cooperativas Argentinas (ACA)) or Donna Kinsella, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398, (202) 482–0408, (202) 482–0145, (202) 482–2704, (202) 482–0194, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively ''petitioners'') requested an administrative review of the antidumping duty order (*see Notice of Antidumping Duty Order: Honey from Argentina,* 66 FR 63672 (December 10, 2001)) on honey from Argentina in response to the Department's notice of opportunity to request a review published in the **Federal Register.** Petitioners requested the Department conduct an administrative review of entries of subject merchandise made by 21 Argentine producers/exporters. In addition, the Department received requests for review from 9 Argentine exporters. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 68 FR 3009 (January 22, 2003). The Department initiated the review for all companies.

On January 17, 2003, petitioners withdrew their requests for review of 14 of the 21 companies. The Department subsequently rescinded the review with respect to these 14 companies. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 13895 (March 21, 2003).

On February 19, 2003, the Department issued sections A, B and C of the antidumping questionnaire to all exporters subject to review. We received responses on May 12 and May 15, 2003 (ACA); March 14 and April 21, 2003 (HoneyMax); March 14 and April 21, 2003 (Nexco); March 21 and April 21, 2003 (Seylinco); April 3, April 21 and May 15, 2003 (CEASA and TransHoney); April 21 and May 15, 2003, (Radix). We received comments from petitioners on April 2 and May 21, 2003 (ACA); May 9, 2003 (Nexco); April 3 and May 12, 2003 (HoneyMax and Seylinco); April 15 and May 12, 2003 (TransHoney); April 14 and May 14, 2003 (CEASA); and April 10 and May 2, 2003 (Radix). The Department issued supplemental questionnaires on June 3, 2003 (ACA); and on May 23, 2003 (HoneyMax, Nexco, Seylinco CEASA, Radix and TransHoney). We received responses on July 1 (ACA); June 12 (HoneyMax); June 18 (Nexco); June 16 (Seylinco); and June 23, 2003 (TransHoney, CEASA and Radix). Petitioners commented on these responses on July 23 (ACA); July 16 (HoneyMax); July 22 (Nexco); July 1 (Seylinco); July 9 (Radix); and July 10, 2003 (TransHoney and CEASA). The Department issued additional supplemental questionnaires on July 29 (TransHoney, CEASA and Radix); July 30 (ACA, HoneyMax and Seylinco); and August 1, 2003 (Nexco). We received responses to these additional supplemental questionnaires on August 19 (ACA); August 11 (HoneyMax); August 20 (Nexco); August 11 (Seylinco); and August 18 (TransHoney).

On July 23, 2003, the Department extended the time limit for issuance of the preliminary results of the administrative review to December 8, 2003. *See Honey from Argentina; Extension of Time Limit for Preliminary Results of Administrative Review,* 68 FR 43491 (July 23, 2003).

On May 12, 2003, the petitioners alleged that CEASA, TransHoney, HoneyMax, Nexco, and Seylinco made sales in the comparison market during the POR at less than the cost of production and requested that the

Department initiate a sales below cost investigation with respect to these companies. On May 21, 2003, Nexco, Seylinco, HoneyMax, CEASA and TransHoney filed comments regarding petitioners' cost allegations. On June 5, 2003, petitioners submitted rebuttal comments. On July 2, 2003, the Department initiated a sales below cost investigation for CEASA and TransHoney. *See Decision Memorandum of Petitioner's Allegation of Sales Below the Cost of Production by Cia Europeo Americana, S.A., HoneyMax, S.A., Nexco, S.A., Seylinco, S.A. and TransHoney, S.A. from The Team to Barbara Tillman,* dated July 2, 2003, and the *Decision Memorandum of Selection of Cost Respondents from The Team to Neal Halper,* dated July 14, 2003. On July 24, 2003, the Department issued Section D questionnaires to suppliers of ACA, TransHoney, CEASA, and Radix.

On August 13, 2003, Radix and CEASA, submitted letters withdrawing their requests for review. On the same date, petitioners also submitted a letter withdrawing their request for review with respect to Radix and CEASA. The Department granted this request and subsequently rescinded the review with respect to these two companies. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 52386 (September 3, 2003).

The Department received responses to Section D of the antidumping questionnaire on September 12, 17, 23, and 29 (suppliers of ACA), and on September 26, 2003 (suppliers of TransHoney). We received comments from petitioners on the Cost Responses of ACA and TransHoney beekeepers and middlemen on October 3, 2003. We issued supplemental questionnaires to ACA and TransHoney (suppliers and middlemen) on October 6, 2003. We received responses to these supplemental questionnaires on November 3 (TransHoney) and November 4, 6 and 7, 2003 (ACA). We received comments from petitioners on the supplemental cost responses of ACA and TransHoney beekeepers and middlemen on November 17, 2003.

On August 28, 2003, the Department requested constructed value (CV) information from Seylinco and HoneyMax. Requests for reconsideration were filed by HoneyMax and Seylinco on September 4, 2003. The Department received comments from petitioners on September 16, 2003. On September 29, 2003, the Department initiated a cost investigation for HoneyMax. *See Decision Memorandum of Initiation of a Cost Investigation for HoneyMax S.A. (''HoneyMax'') and Rescission of Request for Constructed Value Pursuant to an August 28, 2003, Request from the Department, from the Team to Joseph Spetrini,* dated September 29, 2003. On September 30, 2003, the Department issued section D questionnaires to HoneyMax suppliers.

On November 26, 2003, the Department extended the time limit for preliminary results of the administrative review to December 31, 2003. *See Honey from Argentina; Extension of Time Limit for Preliminary Results of Administrative Review,* 68 FR (66399) (November 26, 2003).

Scope of the Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and CBP purposes, the Department's written description of the merchandise under this order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act (Act), we verified sales and cost information provided by the companies using standard verification procedures such as the examination of relevant sales and financial records. Our sales verification results are outlined in the public and proprietary versions of sales verification reports, which are on file in the Central Records Unit (CRU) of the Department in room B–099 of the main Commerce building. *See Transhoney's Sales Verification Report* dated October 22, 2003; *Nexco's Sales Verification Report* dated October 30, 2003; *ACA's Sales Verification Report* dated November 12, 2003; *HoneyMax's and Seylinco's Sales Verification Reports* dated November 7, 2003. The cost verification reports will be available on file in the CRU.

Product Comparison

In accordance with section 771(16) of the Act, we considered all sales of honey covered by the description in the ''Scope of Review'' section of this notice, *supra,* which were sold in the third country market during the POR, to be the foreign like product for the purpose of determining appropriate product comparisons to honey sold in the United States. In making the product comparisons, we matched products based on the physical characteristics reported by ACA, HoneyMax, Nexco, Seylinco and TransHoney. Where there were no sales of identical merchandise in the third country market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value (CV), as appropriate.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as EP or the CEP. The NV level of trade is that of the starting-price sales in the home market or, when NV is based on CV, that of sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act.

To determine whether NV sales are at a different level of trade than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

ACA reported two levels of trade in the U.S. and third country markets

corresponding to differing channels of distribution: (1) Sales to packers and (2) sales to importers. The Department has determined that differing channels of distribution, alone, do not qualify as separate levels of trade (LOTs) when selling functions performed for each customer class are sufficiently similar. We found that the selling functions ACA provided to its reported channels of distribution in the third country and U.S. markets were virtually the same, varying only by the degree to which warranty services were provided. We do not find the varying degree of warranty services sufficient to determine the existence of different marketing stages. Thus, we have determined there is only one level of trade for ACA's sales to all markets. *See ACA's Analysis Memorandum* dated December 30, 2003.

HoneyMax, Nexco, Seylinco and TransHoney reported a single level of trade for all U.S. and third country sales. Each company claimed that its selling activities in both markets are identical. At verification, we found essentially the same services offered in both markets. Therefore for HoneyMax, Nexco, Seylinco, and TransHoney, we determine that all reported sales are made at the same level of trade, and we have no need to make a level of trade adjustment. *See Analysis Memoranda for HoneyMax, Nexco, Seylinco* and *TransHoney* dated December 30, 2003.

Fair Value Comparisons

To determine whether sales of subject merchandise made by ACA, HoneyMax, Nexco, Seylinco, and TransHoney to the United States were made at less than fair value, we compared the EP or CEP, to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the EP or CEP of individual U.S. transactions to the monthly weight-averaged NV of the foreign like product where there were sales at prices above the cost of production (COP), as discussed in the ''Cost of Production Analysis'' section below.

Transactions Investigated

Section 351.401(i) of the Department's regulations states that the Department will normally will use date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which material terms of sale are established. For ACA and HoneyMax (U.S. sales), the Department used the reported shipment date as shipment occurred prior to invoice date. TransHoney reported either shipment date or invoice date, whichever occurred first. Nexco, Seylinco, and HoneyMax (third country sales) reported the invoice date as date of sale. However, for Nexco the Department used shipment date as date of sale where shipment date occurred prior to invoice date as it is the Department's practice to use the date of shipment as the date of sale where date of shipment precedes invoice date. *See Notice of Final Determinations of Sales at Less than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada,* 68 FR 52741, (September 5, 2003) and accompanying Decision Memo at Comment 3.[1]

Export Price and Constructed Export Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. * * *,'' as adjusted under subsection (c). Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. * * *,'' as adjusted under subsections (c) and (d). For purposes of this administrative review, HoneyMax classified all of its U.S. sales as CEP because all of its U.S. sales were made through its wholly-owned U.S. affiliate to non-affiliated purchasers in the United States. ACA, Nexco, Seylinco and TransHoney have classified their U.S. sales as EP because all sales were made to unaffiliated purchasers in the U.S. market. For purposes of these preliminary results, we have accepted these classifications.

Normal Value

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compare each company's aggregate volume of home market sales of the foreign like product to its aggregate volume of U.S. sales of subject merchandise. For HoneyMax, Nexco, Seylinco, and TransHoney, the aggregate volume of sales in the home market of the foreign like product was less than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we determined for these companies that sales in the home market did not provide a viable basis for calculating NV.

Section 773(a)(1)(C)(iii) provides that Commerce may determine that home market sales are inappropriate as a basis for determining normal value if the particular market situation would not permit a proper comparison. On March 4, 2003, ACA alleged that during the POR a particular market situation existed with respect to sales of honey in Argentina which renders these sales inappropriate for purposes of calculating NV. Petitioners responded on March 26, 2003, alleging that ACA failed to explain why their home market is not appropriate for determining normal value. On April 10, ACA responded deeming the following factors relevant in finding a particular market situation with respect to honey sold in the Argentine market: (1) The industry is export oriented; (2) home market sales are incidental and of inferior quality; (3) sales were at reduced prices; and (4) the marketing and distribution of domestic sales were perfunctory. On April 25, 2003, the Department determined that a particular market situation exists with respect to ACA's sales of honey in Argentina which renders the Argentine market inappropriate for purposes of determining normal value. *See Decision Memorandum of Analysis of Particular Market Place Situation from Angela Strom Through Donna Kinsella and Richard Weible to Barbara Tillman,* dated April 25, 2003.

When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a particular third-country market may be utilized if (I) the prices in such market are representative; (II) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (III) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price. HoneyMax, Nexco,

[1] *See* page 16 of the Decision Memorandum, which is available on the Web at *http://ia.ita.doc.gov/frn/summary/canada/03–22661–1.pdf* or in the Import Administration's Central Records Unit located at Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

TransHoney and Seylinco reported Germany as their largest third country market during the POR in terms of volume of sales (and with five percent or more of sales to the United States). ACA reported the United Kingdom as its largest third country market during the POR in terms of volume of sales (and with five percent or more of sales to the United States). *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination To Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile,* 67 FR 51186 (August 7, 2002), (selecting the largest third country market as the basis for normal value). The Department preliminarily determines that the prices in Germany and the United Kingdom are representative and no particular market situation exists that would prevent a proper comparison. As a result, for HoneyMax, Nexco, TransHoney, and Seylinco, normal value is based on sales to Germany. For ACA, normal value is based on sales to the United Kingdom.

For all companies under review, therefore, NV is based on third country market sales to unaffiliated purchasers made in the usual commercial quantities and in the ordinary course of trade. For NV, we used the prices at which the foreign like product was first sold for consumption in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the EP or CEP as appropriate. We calculated NV as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

2. Cost of Production

Background

Based on the information contained in a timely cost allegation filed by petitioners on May 12, 2003, the Department found reasonable grounds to believe or suspect that sales of the foreign like product by HoneyMax and TransHoney, in their respective comparison markets, were made at prices below the cost of production, pursuant to section 773(b)(1) of the Act. *See Petitioners' Allegation of Sales Below Cost* dated May 12, 2003. As a result, the Department initiated a sales below-cost investigation for TransHoney and Honeymax. *See Decision Memorandum of Petitioner's Allegation of Sales Below the Cost of Production by Cia Europeo Americana, S.A., HoneyMax, S.A., Nexco, S.A., Seylinco, S.A. and TransHoney, S.A. from the Team to Barbara Tillman,* dated July 2, 2003; and *Decision Memorandum of Initiation of a Cost Investigation for HoneyMax, S.A. (''HoneyMax''); and Rescission of Request for Constructed Value, Pursuant to an August 28, 2003, Request from the Department; from the Team to Joseph Spetrini,* dated September 29, 2003.

With respect to ACA, because the Department found in the investigation certain sales made to the comparison market at prices below the cost of producing the subject merchandise and excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that ACA made sales in the comparison market at prices below the cost of producing the merchandise in this review. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from Argentina,* 66 FR 50611 (October 4, 2001); and section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated a sales below cost investigation with respect to ACA to determine whether ACA made sales to the comparison market during the POR at prices below the respective COP within the meaning of section 773(b) of the Act.

A. Cost of Production Analysis

As noted above, because the Department disregarded sales below cost in the investigation for ACA, which was the most recently completed segment of the proceeding, we automatically initiated a cost of production (COP) inquiry for this respondent. For both HoneyMax and TransHoney S.A., based on our analysis of allegations made by the petitioners after the initiation of the administrative review, we found that there were reasonable grounds to believe or suspect that sales of honey in the comparison market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated company-specific sales-below-cost investigations to determine whether sales of honey were made at prices below their COP. Further, as noted above in the case history, on March 14, 18, and 28, 2003, the aforementioned respondents stated in the section A questionnaire responses that they were exporters of the subject merchandise, not producers of subject merchandise, and included a list of their honey suppliers. Because each exporter reported that it had approximately 20 to 300 beekeeper suppliers and 8 to 20 intermediary suppliers, the Department developed a methodology to calculate a representative COP and CV for the merchandise under consideration. The Department's cost respondent methodology resulted in selecting five beekeepers that supplied the largest quantity of honey to each exporter as reported in the exporters' list of beekeeper suppliers.[2] In addition, the Department selected one intermediary supplier that supplied that largest quantity of honey to each exporter. A simple average of the costs of production for each exporter was then calculated.

B. Calculation of COP

As noted above, respondents were exporters of the subject merchandise, not producers of subject merchandise. Therefore, consistent with our practice regarding the cost of resales of subject merchandise, we requested COP data from selected beekeeper suppliers for each exporter. *See Selection of Cost of Production Respondents Memorandum,* dated July 14, 2003. In accordance with section 773(b)(3) of the Act, we calculated a COP for each beekeeper supplier based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses, interest expenses and comparison market packing costs for each exporter's selected beekeeper suppliers. We then added the associated selling expenses that each exporter incurred to calculate the final COP.

As specified below, we determined that the Argentine economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation in our comparison of costs and prices, we requested that the beekeeper suppliers submit the product-specific cost of production (COP) incurred during the cost reporting period which corresponded to a full honey growing and harvesting season. We then calculated an average COP for honey after indexing the reported monthly costs to an equivalent currency level as of November 2002 using the wholesale price index from the Argentine Instituto National de Estadistica y Censos to reflect the effects of inflation. After calculating the weighted average COP for each cost respondent, we calculated an average COP for each exporter based on that exporter's selected honey suppliers. We then restated the average COPs for each exporter in the currency value of each respective month.

Common and Individual Cost Respondent Adjustments

We relied on the COP data submitted by each cost respondent in its cost

[2] *See Selection of Cost of Production Respondents Memorandum to Neal M. Halper from The Team* dated July 14, 2003.

questionnaire response, as discussed below:

(1) Common Cost Respondent Adjustment

We adjusted the reported labor costs for all cost respondents. Virtually all of the labor provided on these farms was performed by the owners or a small number of hired laborers. For reporting purposes, a majority of the cost respondents relied on estimated labor hours and rates for the hired laborers and minimal or zero labor costs for the owners. However, nine of the beekeeper suppliers did not maintain any labor type records and could not provide supporting documentation for the labor costs reported for hired laborers. In addition, none of the beekeeper suppliers were able to provide support for the reported owner's labor costs. As a result, we relied instead on the per hive labor rate from the one beekeeper supplier that maintained and provided supporting documentation for the costs incurred for hired laborers to produce honey. For the owner's labor costs, we used the labor cost from the Argentine Government's Bulletin For Agricultural Workers.[3]

We adjusted the denominator used in the calculation of the general and administrative expenses (G&A) and the financial expense ratios for all beekeepers. We excluded imputed labor from the total cost of manufacturing (COM) of all products in the calculation of the ratio denominator. We then applied the calculated G&A and financial expense ratios to the per-unit COM exclusive of imputed labor.

(2) Individual Cost Respondent Adjustments

See Memoranda from The Team to Neal M. Halper, ''Cost of Production and Constructed Value Adjustments for the Preliminary Results,'' dated December 30, 2003, (*COP/CV Adjustments Memoranda*).

C. Test of Third Country Prices and Results of the COP Test

In determining whether to disregard third country market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given model (*i.e.*, CONNUM) were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded below-cost sales made by TransHoney or ACA where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

With respect to HoneyMax, because the Department did not receive COP information from HoneyMax suppliers until very late in the proceeding, we were unable to incorporate sales below cost analysis in these preliminary results of the review. Subsequent to these preliminary results and prior to the date for comments with respect to HoneyMax, the Department intends to issue a preliminary analysis memorandum detailing the COP calculation for HoneyMax suppliers and the results of the cost test involving HoneyMax sales. These results, in consideration of all comments submitted, will be included in the Department's final results of the review.

Price-to-Price Comparisons

ACA

For those product comparisons for which there were sales at prices above the COP, we based NV on the third country market prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight) in accordance with section 773(a)(6)(B) of the Act. We also made adjustments, where applicable, for direct selling expenses, in accordance with section 773(a)(6)(C) of the Act. *See ACA's Analysis Memorandum* dated December 30, 2003.

HoneyMax

We based NV on the third country market prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit, where appropriate, in accordance with section 773(a)(6)(C). We also made adjustments, where applicable, for other direct selling expenses in accordance with section 773(a)(6)(C) of the Act. *See HoneyMax's Analysis Memorandum* dated December 30, 2003.

Nexco

We based NV on the third country prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit and other direct selling expenses where appropriate in accordance with section 773(a)(6)(C) of the Act. *See Nexco's Analysis Memorandum* dated December 30, 2003.

Seylinco

We based NV on the third country prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit where appropriate in accordance with section 773(a)(6)(C) of the Act. We also made adjustments, where applicable, for other direct selling expenses in accordance with section 773(a)(6)(C) of the Act. *See Seylinco's Analysis Memorandum* dated December 30, 2003.

TransHoney

For those product comparisons for which there were sales at prices above the COP, we based NV on the third country market prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit and direct selling expenses, where appropriate, in accordance with section 773(a)(6)C of the Act. *See TransHoney's Analysis Memorandum* dated December 30, 2003.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a

[3] *See RESOLUCION C.N.T.A. N° 33/94* issued on December 29, 1994, which is available on the Web at *http://www.trabajo.gov.ar/legislacion/resolucion/files_rural/res0033–1994.dot.*

fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See Policy Bulletin 96.1; see also Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands,* 64 FR 36841, 36843 (July 8, 1999); *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 64 FR 30476, 30480 (June 8, 1999).

In adopting its currency conversion policy, the Department recognized that a sudden large decrease in the value of a currency without any significant rebound could meet the technical definition of a fluctuation. To avoid this unintended result, in Policy Bulletin 96.1 the Department explained that we would apply the average benchmark rate in the case of an exchange rate ''fluctuation'' but also stated that we would use daily rates when ''the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is merely fluctuating.'' In *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip From Korea,* 64 FR 30664 (June 8, 1999) (SSSS from Korea), the Department found that a decline of more than 40 percent within a two-month period was sufficiently large and precipitous that use of daily rates was warranted during this two-month period. In contrast, in *Notice of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Indonesia,* 64 FR 14690, 14693 (March 26, 1999) (*Extruded Rubber Thread from Indonesia*), the Department found that a decline of some 50 percent spread over five months was not precipitous and large and continued to employ its normal exchange rate methodology. See 64 FR 14690, 14693 (March 26, 1999). *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 64 FR 56759, 56763 (October 21, 1999) (*Pipe and Tube from Thailand). See also, DRAMS from Korea: Final Results of Antidumping Duty Administrative Review,* 64 FR 69694, 69703–04 (December 14, 1999).

Our preliminary analysis of dollar-peso exchange rates shows that the peso declined rapidly in early 2002, losing almost 70 percent of its value over a three month period. Prior to this, the Argentine peso was pegged to the U.S. dollar and it did not fluctuate. Starting in January 2002, however, the peso experienced a large decline against the dollar in short succession, and it did not rebound significantly in a short time. Indeed, the decline in value of the peso was as large and more rapid than the decline in the value of the Korean won in 1997, which we have found to be precipitous and large. *See Notice of Final Determination of Sales at Less than Fair Value of Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 64 FR 109, 30664, 30670 (June 8, 1999). As such, we preliminary determine that the decline in the peso during January through March 2002 was of such magnitude that the dollar-peso exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.*, as having experienced only a momentary drop in value relative to the normal benchmark. We find that there was a large, precipitous drop in the value of the peso in relation to the U.S. dollar between January through March 2002, warranting application of daily exchange rates. We recognize that, following a large and precipitous decline in the value of a currency, a period may exist during which exchange rate expectations are revised and thus it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Thus, we devised a methodology for identifying the point following a precipitous drop at which it is reasonable to presume the rates were merely fluctuating. Beginning on January 7, 2002, we used only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely ''fluctuating.'' Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time. Accordingly, from the first of these five days, we resumed classifying daily rates as ''fluctuating'' or ''normal'' in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark. *See Pipe and Tube from Thailand.* Applying this methodology in the instant case, we used daily rates from January 7, 2002, through March 31, 2002. We then resumed the use of our normal methodology through the end of the period of review (November 30, 2002), starting with a benchmark based on the average of the 20 reported daily rates beginning on April 1, 2002.

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coins from France,* 68 FR 47049 (August 7, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the Argentine Peso. Therefore, we made currency conversions based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service. The exchange rate is expressed as pesos per dollar. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary.

Preliminary Results of Review

As a result of our review we preliminarily determine the following weighted-average dumping margins exist for the period May 11, 2001, through November 30, 2002:

Manufacturer/exporter	Weighted average margin (percentage)
Asociacion de Cooperativas Argentinas	0
HoneyMax S.A	0
Nexco S.A	0.87
Seylinco S.A	0.59
TransHoney S.A	0

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments,

may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting case briefs, rebuttal briefs, and written comments would provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to CBP upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rates for all companies reviewed will be the rates established in the final results of review;

(2) For any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published in the most recent period;

(3) If the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate from the investigation (36.59 percent); *See Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina,* 66FR 50611–50613, 40562 (October 4, 2001).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 30, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–236 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Notice of Rescission of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: January 6, 2004.

SUMMARY: On July 29, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 44524) a notice announcing the initiation of an administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan covering the period June 1, 2002, through May 31, 2003. This review was requested by United States Steel Corporation (the petitioner). We are now rescinding this review as a result of the petitioner's withdrawal of its request for an administrative review.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Keith Nickerson, at (202) 482–0631 or (202) 482–3813, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 351.213(b), on June 30, 2003, the petitioner requested an administrative review of the antidumping duty order for Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Tubes and Sumitomo Metal Industries, Ltd. (collectively, the respondents) on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan. On July 29, 2003, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period June 1, 2002, through May 31, 2003 (68 FR 44524). The petitioner withdrew its request for this review on December 22, 2003.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review. The regulations further provide that the Secretary ''may extend this time limit if the Secretary decides that it is reasonable to do so.'' The petitioner was the only party to request this review. Although the petitioner's withdrawal request for this review was not within the normal time limit as prescribed in section 351.213(d)(1) of the Department's regulations, we find that, under the circumstances of this review, it is appropriate to accept the withdrawal request and rescind the review. Continuing the review would only require the petitioner, respondents, and the Department expend time and resources on a review in which the only party that requested the review is no longer interested.

The respondents have either claimed no shipments during the period of review or have stated that they will not participate in the review in response to the Department's questionnaire, and, therefore, the Department has neither released supplemental questionnaires nor conducted verification at this point in the proceeding. Accordingly, the Department does not believe the administrative review has proceeded to a point at which it would be ''unreasonable'' to rescind the review. The Department, therefore, determines that it is reasonable to extend the 90-day time limit and to rescind the

administrative review. The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection within 15 days of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 31, 2003.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–237 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489–501]

Certain Welded Carbon Steel Pipe and Tube from Turkey: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or Martin Claessens at (202) 482–5451, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On May 1, 2003, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 23281 (May 1, 2003). On May 30, 2003, in accordance with 19 CFR 351.213(b), interested parties Allied Tube & Conduit Corporation, IPSCO Tubulars, Inc., and Wheatland Tube Company requested a review of producers/exporters of certain welded carbon steel pipe and tube.On July 1, 2003, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain carbon steel welded pipe and tube from Turkey, covering the period May 1, 2002, through April 30, 2003 (68 FR 39055). The preliminary results are currently due no later than February 2, 2004.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit due to the complex issues that have been raised. First, the Department requires additional time to analyze the numerous affiliations and complex corporate structure of the respondent. In addition, the Department must address the complicated cost issues associated with Turkey exhibiting high inflation during the period of review.

Therefore, the Department is extending the time limit for completion of the preliminary results by 60 days until March 31, 2004. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

Dated: December 30, 2003.

Gary Taverman,

Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group II.

[FR Doc. 04–235 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303E]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of affirmative finding.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) granted the affirmative finding for the Republic of El Salvador under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the Eastern Tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by El Salvadorian-flag purse seine vessels or purse seine vessels operating under El Salvador's jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Republic of El Salvador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the Department of State.

DATES: Effective December 31, 2003, through March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213; Phone 562–980–4000; Fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, as amended by the International Dolphin Conservation Program Act (IDCPA) (Pub. L. 105–42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State. A finding will remain valid for 1 year (April 1 through March 31) or for such other period as the Assistant Administrator may determine. An affirmative finding applies to tuna and tuna products that were harvested in the ETP by purse seine vessels of the nation and applies to any tuna harvested in the ETP purse seine fishery after March 3, 1999, the effective date of the IDCPA.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. A nation may opt to provide information regarding compliance with the IDCP directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated if the Assistant Administrator, in consultation with the Secretary of State, determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP. Every 5 years, the government of the harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Republic of El Salvador and obtained from the IATTC and the Department of State and determined that the requirements under the MMPA to receive an affirmative finding have been met.

After consultation with the Department of State, NMFS granted the Republic of El Salvador's affirmative finding allowing the importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP after March 3, 1999, by El Salvadorian-flag purse seine vessels or vessels under El Salvadorian jurisdiction. This finding will remain in effect until March 31, 2004.

In subsequent years 2004 through 2007, the Assistant Administrator will determine on an annual basis whether the Republic of El Salvador is meeting the requirements under section 101(a)(2)(B) and (C) of the MMPA. If necessary, documentary evidence may also be requested from the Republic of El Salvador to determine whether the affirmative finding criteria are being met. If the affirmative finding for the Republic of El Salvador is renewed after NMFS's annual review in the years 2004 through 2007, the Republic of El Salvador must submit a new application in early 2008 for an affirmative finding to be effective for the period April 1, 2008, through March 31, 2009, and the subsequent 4 years.

Dated: December 31, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–233 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in January, 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Monday, January 26, 2004, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA; telephone: 508–339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will discuss and continue work on a process to review and integrate the results of cooperative research into the management process. It will also work on developing research priorities for 2004 for consideration by the Council and the NMFS Regional Administrator.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 31, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00690 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122903H]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2004 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by March 30, 2004, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from and written comments should be sent to Mr. Donald Hansen, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, telephone: 503–820–2280 (voice) or 503–820–2299 (fax). For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION:

Schedule for Document Completion and Availability

March 2, 2004: ''Review of 2003 Ocean Salmon Fisheries'' and ''Preseason Report I-Stock Abundance Analysis for 2004 Ocean Salmon Fisheries'' will be available to the public from the Council office and posted on the Council website at *http://www.pcouncil.org*.

March 23, 2004: ''Preseason Report II-Analysis of Proposed Regulatory Options for 2004 Ocean Salmon Fisheries'' and public hearing schedule will be mailed to the public and posted on the Council website at *http://www.pcouncil.org*. The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 5, 2004: ''Draft Environmental Assessment for the Proposed 2004 Management Measures for the Ocean Salmon Fishery Managed under the Pacific Coast Salmon Plan'' will be available at the Council meeting at the Red Lion Hotel Sacramento, Sacramento, CA and posted on the Council website at *http://www.pcouncil.org*.

April 21, 2004: Council adopts ocean salmon fishing management measures will be posted on the Council website at *http://www.pcouncil.org*.

May 1, 2004: Federal regulations will be implemented and ''Preseason Report III-Analysis of Council Adopted Ocean Salmon Management Measures for 2004 Ocean Salmon Fisheries'' will be available from the Council office and posted on the Council web site at *http://www.pcouncil.org*.

Meetings and Hearings

January 20–23, 2004: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft ''Review of 2003 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2004 ocean salmon fisheries.

February 17–20, 2004: The STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis for 2004 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2004 ocean salmon fisheries.

March 8–12, 2004: The Council and advisory entities will meet at the Sheraton Tacoma Hotel, Tacoma, WA to adopt the 2003 salmon management options for public review.

March 29–30, 2004: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified here.

March 29, 2004: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone 360–268–9101.

March 29, 2004: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone 541–269–4099.

March 30, 2004: Tradewinds Lodge and Restaurant, Convention Room, 400 South Main Street, Fort Bragg, CA 95437–4806, telephone 707–964–4761.

April 5–9, 2004: Council and advisory entities meet at the Red Lion Hotel Sacramento, 1401 Arden Way Sacramento, CA 95815, telephone: (916) 922–8041, to adopt 2004 management measures for implementation by NMFS.

April 6, 2004: Testimony on the management options is taken during the Council meeting at the Red Lion Hotel Sacramento, Sacramento, CA.

Although non emergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (voice), or 503–820–2299 (fax) at least five days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: December 30, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–231 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303L]

Marine Mammals; File No. 642–1536

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Joseph R. Mobley, Jr., Ph.D., Professor Psychology, University of Hawaii-West Oahu, 96–129 Ala Ike, Pearl City, Hawaii 96782 (Principal Investigator: Dr. Joe Mobley), has requested an amendment to scientific research Permit No. 642–1536–00.

DATES: Written or telefaxed comments must be received on or before February 5, 2004.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Protected Species Coordinator, Pacific Islands Region Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 642–1536–00, issued on March 15, 2000 (65 FR 13949) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA- 16 U.S.C. 1361 *et seq.*), the

Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA- 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 642–1536–00 authorizes the permit holder to conduct aerial and vessel-based research, including surface and underwater photography/ videography for fluke identification and sex verification, on North Pacific humpback whales (*Megaptera novaeangliae*) and several other species of cetaceans in Hawaii waters. The permit holder now requests authorization to add biopsy sampling and suction cup/implantable bioacoustic tagging of various marine mammal species resident to Hawaii, including humpback whales, fin whales (*Balaenoptera physalus*), sei whales (*Balaenoptera borealis*), Bryde's whales (*Balaenoptera edeni*), killer whales (*Orcinus orca*), short-finned pilot whales (*Globicephala macrorhynchus*), melon-headed whales (*Peponocephala electra*), false killer whales (*Pseudorca crassidens*), spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), striped dolphins (*Stenella coeruleoalba*), Risso's dolphins (*Grampus griseus*), rough-toothed dolphins (*Steno bredanensis*), bottlenose dolphins (*Tursiops truncatus*), sperm whales (*Physeter macrocephalus*), pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whales (*Ziphius cavirostris*), and Blainville's beaked whales (*Mesoplodon densirostris*). Specifically, the permit holder is requesting 40 tagging takes and 80 biopsy takes for humpback whales, 5 tagging takes and 10 biopsy takes for fin, sei, Bryde's, and killer whales, and 20 tagging takes and 40 biopsy takes for all other requested species. Biopsy sampling is requested to further study the population structure of the above species. Bioacoustic tagging is requested to record and quantify the various acoustic stimuli in the animals' environment, with a primary objective of tagging singing humpback whale males to further understand song structure and duration. The proposed research is requested for the duration of the current permit which expires on May 31, 2005. All research will take place in Hawaiian waters.

NOAA environmental review procedures provide that scientific research permits are generally categorically excluded from the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) requirements to prepare an environmental assessment (EA) or environmental impact statement. However, given that portions of the research are directed at species listed as threatened or endangered under the ESA, NMFS is currently preparing an EA to determine if the proposed activities are likely to result in any significant impacts to social, economic, biological or physical environment resources.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 30, 2003.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–232 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303K]

Marine Mammals; Photography Permit File No. 1061–1738

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Joanne Lunt, Wag TV, 2d Leroy House, 436 Essex Road, London N1 3QP, England [Principal Investigator: Joanne Lunt] has applied in due form for a permit to take Northern elephant seals (*Mirounga angustirostris*) for purposes of commercial/educational photography.

DATES: Written or telefaxed comments must be received on or before February 5, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Jennifer Jefferies (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) of the MMPA provides for photography for educational or commercial purposes involving marine mammals in the wild not listed as endangered or threatened. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harassment of non-listed marine mammals for photographic purposes.

The applicant specifically proposes to take by harassment up to 200 northern elephant seals during land-based filming activities. The purpose of the proposed project is to collect footage of mating behavior and also document permitted scientists conducting research on northern elephant seals. The footage will be used to produce a documentary on the evolution of sexual behavior that will be broadcast on Discovery Channel US and Channel 4 UK. Filming activities will take place in Point Reyes or Ano Nuevo, California. The Permit would be valid 1 year after the date of issuance with filming currently scheduled to take place during February 2004.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile to (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**,

NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 30, 2003.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–230 Filed 1–5–04; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

In the Matter of Intermarket Clearing Corporation—Request for Vacation From Designation as Derivatives Clearing Organization

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: In response to a request by the Intermarket Clearing Corporation (''ICC''), the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is issuing an order vacating ICC's designation as a Derivatives Clearing Organization (''DCO'').

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: R. Trabue Bland, Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430. E-mail: *tbland@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 5b(d) of the Commodity Exchange Act [1] (''Act'') provides that DCOs that clear contracts for boards of trade designated by the Commission as contract markets prior to a certain date are deemed registered with the Commission. Under Section 1a(29)(C) of the Act, registered DCOs are ''registered entities.'' Section 7 of the Act [2] provides that ''any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect.'' ICC has requested that the vacation of this registration take place before the expiration of the ninety-day period. In response to the request, the Commission is exempting ICC from the notice requirements of Section 7 of the Act pursuant to Section 4(c) of the Act,[3] which gives the Commission broad exemptive authority, and then vacating ICC's registration.

II. Request for Vacation of Registration

A. Background

By letter to the Division of Clearing Intermediary Oversight, the ICC submitted a request for the vacation of registration.[4] The ICC is a registered DCO under Section 5b(d) of the Act and thus a registered entity as defined in Section 1a(29)(C) of the Act. The ICC is a wholly owned subsidiary of The Options Clearing Corporation (''OCC''), another registered DCO. For the past several years, ICC has not engaged in any clearing activities, and thus the OCC wishes to merge the ICC into the OCC. At the completion of the merger, ICC will cease to exist as a corporate entity. Therefore, the ICC requests that the Commission vacate the registration of ICC as a DCO.

Section 7 of the Act allows ''any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect.'' ICC served notice to the Commission on November 17, 2003. However, the merger of ICC and OCC will take place before the end of the calendar year 2003, which will occur before the expiration of the ninety-day notice period required by Section 7 of the Act. Therefore, ICC requests, pursuant to Section 4(c) of the Act, that the Commission exempt ICC from Section 7's ninety-day notice requirement. On December 18, 2003, the Commission published a proposed order and invited comment on ICC's request. [5] The Commission received no comments.

B. Public Interest Considerations

The Commission is waiving the Section 7 ninety-day notice requirement pursuant to section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission ''may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the Act, or any other provision of the Act * * * if the Commission determines that the exemption would be consistent with the public interest.'' [6]

As explained above, the ICC has not operated as a clearing entity in a number of years. The merger of ICC into OCC will allow the OCC to streamline its operations. The Commission believes that exempting ICC from the ninety-day requirement of section 7 is consistent with the public interest, is consistent with the purposes of the Act and would have no adverse effect on the ability of OCC to fulfill its self-regulatory responsibilities imposed by the Act.

The Commission invited comments specifically on exempting ICC from the ninety-day requirement of section 7 and received no comments.

III. Conclusion

After consideration of the ICC request, the Commission has determined to exempt ICC from the ninety-day notice requirement of section 7 of the Act. Furthermore, the Commission is vacating the Intermarket Clearing Corporation's registration as a derivatives clearing organization upon completion of the merger between ICC and OCC.

IV. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new order or to determine whether the benefits of the order outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.''

[1] 7 U.S.C. 7a–1(2003).

[2] 7 U.S.C. 11 (2003).

[3] 7 U.S.C. 6c (2003).

[4] The letter, dated November 17, 2003, was sent to John Lawton, Deputy Director and Chief Counsel of the Division of Clearing and Intermediary Oversight.

[5] 68 FR 79494 (December 18, 2003).

[6] *See, e.g.,* 65 FR 77993 (December 13, 2000) (adopting final rules pursuant to the 4(c) exemption).

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, not withstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The order is intended to vacate the registration of the ICC, in order to allow the Options Clearing Corporation to merge with the ICC. The Commission has considered the costs and benefits of the order in light of the specific provisions of Section 15(a) of the Act.

1. Protection of market participants and the public.

The ICC does not provide any clearing services to any designated contract markets. Accordingly, the order should have no effect on the Commission's ability to protect market participants and the public.

2. Efficiency and competition.

The order is not expected to have an effect on efficiency or competition.

3. Financial integrity of futures markets and price discovery.

The order should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound risk management practices.

The order should have no effect on sound risk management practices.

5. Other public interest considerations.

The order will have the positive effect of allowing the OCC to streamline its operations.

V. Order

Upon due consideration, and pursuant to its authority under Section 7 of the Act to vacate the designation of a registered entity and pursuant to its authority under Section 4(c) of the Act to exempt ICC from the requirement that notice be served at least 90 days prior to vacation, the Commission finds that:

(1) The Intermarket Clearing Corporation (''ICC'') is currently registered with the Commission as a derivatives clearing organization (''DCO'') under section 5b(d) of the Commodity Exchange Act (the ''Act'');

(2) ICC has not engaged in activity as a DCO for several years;

(3) ICC proposes to merge into The Options Clearing Corporation, which is also registered as a DCO;

(4) Upon the effectiveness of that merger, ICC will cease to exist as a corporate entity;

(5) ICC has requested that the Commission terminate ICC's registration as a DCO upon the effectiveness of that merger;

(6) The merger of ICC and OCC will take place before the expiration of the ninety-day notice requirement of section 7 of the Act; and

(7) Exempting ICC from the ninety-day notice requirement of section 7 of the Act will have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act and will be consistent with the public interest.

Therefore, the Commission hereby orders that ICC's designations as a DCO be and hereby is vacated upon the effectiveness of ICC's merger into the Options Clearing Corporation.

Issued in Washington, DC, on December 30, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–189 Filed 1–5–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 5, 2004.

Title, Form, and OMB Number: Air Force Academy Secondary School Transcript, OMB Number 0701–0066.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 7,954.

Responses Per Respondent: 1.

Annual Responses: 3,977.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 3,977.

Needs and Uses: This information collection is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–192 Filed 1–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 5, 2004.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subparts 227.71, ''Rights in Technical Data;'' and 227.72, ''Rights in Computer Software and Computer Software Documentation;'' and related clauses and provisions at 252.227; OMB Number 0704–0369.

Type of Request: Reinstatement, Without Change, of a Previously Approved Collection, for Which Approval has Expired.

Number of Respondents: 54,925.

Responses Per Respondent: 21 (average).

Annual Responses: 1,034,342.

Average Burden Per Response: 1.7 hours (average).

Annual Burden Hours: 1,760,155.

Needs and Uses: The Defense Federal Acquisition Regulation Supplement (DFARS) Subparts 227.71 and 227.72 prescribe the use of solicitation

provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, ''Rights in Technical Data,'' and 10 U.S.C. 2321, ''Validation of Proprietary Data Restrictions.'' DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract is complete and accurate and satisfies contract requirements.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–193 Filed 1–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 5, 2004.

Title, Form, and OMB Number: Air Force Officer Training School (OTS) Accession Forms, OMB Number 0701–0080.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 1,200.

Responses Per Respondent: 1.

Annual Responses: 1,200.

Average Burden Per Response: 1 hour, 15 minutes.

Annual Burden Hours: 1,500.

Needs and Uses: This information collection is used by field recruiters and education counselors in the processing of Officer Training School (OTS) applications.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–194 Filed 1–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by February 5, 2004.

Title, Form, and OMB Number: Health professions Accession Forms; AETC Forms 1402 and 1437; OMB Number 0701–0078.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 3,600.

Responses Per Respondent: 1.

Annual Responses: 3,600.

Average Burden Per Response: 1 hour average.

Annual Burden Hours: 3,600.

Needs and Uses: The forms are used by field recruiters in the processing of health professions applicants applying for a commission in the United States Air Force.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 30, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–195 Filed 1–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Business Board (DBB) will meet in open session on Wednesday, January 14, 2003, at the Pentagon, Washington, DC from 0815 until 0940 in room 2C–554, the Pentagon. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest on the Department of Defense. At this meeting, the Board's Human Resources (Minority Representation in Senior DoD Ranks) and Acquisition (Fuel Hedging) task groups will deliberate on their preliminary recommendations related to tasks assigned earlier this year. The Board also will discuss potential Task Group topics for 2004.

DATES: Wednesday, January 14, 2004, 0815 to 0940 hrs. in room SC–554, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to

attend the meeting must contact the Defense Business Board no later than Wednesday, January 7 for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by Monday, January 5 to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty minutes.

The DBB may be contacted at: Defense Business Board, 1100 Defense Pentagon, Room 2E314, Washington, DC 20301–1100, via e-mail at *DBB@osd.pentagon.mil,* or via phone at (703) 695–0499.

Dated: December 9, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–289 Filed 1–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 8, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 2003.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Early Reading First National Evaluation-Enrollment and Consent.

Frequency: One time.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 765. Burden Hours: 191.

Abstract: The purpose of the national evaluation is to determine the overall impact of Early Reading First (ERF) programs, including whether participants improve their skills in oral language, phonological awareness, print awareness, and alphabet knowledge compared to non-participants. The evaluation is also designed to address whether program participants improve their outcomes in areas other than language and literacy relative to nonparticipants, for which children ERF is most effective, and which program characteristics are associated with more optimal outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2437. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address, *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–149 Filed 1–5–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–08; Scientific Discovery Through Advanced Computing: Climate Change Prediction Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (BER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Climate Change Prediction Program (CCPP), which is a component of the U.S. Climate Change Science Program (CCSP). Applications should describe research projects supporting the development of simulation models (computer programs) for prediction of climate decades to centuries in the future, and should clearly describe how that research will contribute to a measurably improved ability to use terascale computing to predict climatic change. All applications submitted in response to this notice must explicitly state how the proposed research will support accomplishment of the BER Climate Change Research Division's (CCRD's) Long Term Measure of Scientific Advancement to deliver improved data and models for policy makers to determine acceptable levels of greenhouse gases in the atmosphere.

DATES: Applicants are encouraged (but not required) to submit a 1–2 page preapplication for programmatic review. There is no deadline for the

preapplication, but early submission of preapplications is encouraged to allow time for meaningful discussions.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., March 15, 2004, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2004.

ADDRESSES: Preapplications referencing Program Notice DE–FG01–04ER04–08 should be sent to Dr. Jeffrey S. Amthor, CCPP Program Manager, via e-mail to: *jeff.amthor@science.doe.gov.* Please include ''Preapplication Program Notice DE–FG01–04ER04–08'' in the E-mail subject field.

Formal applications referencing Program Notice DE–FG01–04ER04–08, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey S. Amthor, phone: (301) 903–2507; e-mail: *jeff.amthor@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: Scientific Discovery Through Advanced Computing Program and the Climate Change Prediction Program

Accurate prediction of future climate on decadal to centennial time scales is a major scientific objective of the BER CCRD. The CCPP represents the current phase of BER's long-standing climate modeling and simulation research agenda. The CCPP is focused on developing, testing, and applying climate simulation and prediction models (computer programs) that stay at the leading edge of scientific knowledge and computational technology. The CCPP will continue to develop models based on more definitive theoretical foundations and improved computational methods that will run efficiently on current and future high-performance supercomputers. The intent is to increase dramatically both the accuracy and throughput of computer programs designed to predict effects of increased concentrations of greenhouse gases in the atmosphere on the climatic system. Specifically, the CCPP will measurably advance models used to predict climatic variability and change decades to centuries in the future under a variety of forcing scenarios. Such advancements will be associated with, but not limited to, improving component model performance and accuracy, implementing efficient strategies to couple model components, and maximizing throughput on computers capable of peak speeds of 10–50 trillion Operations Per Second (10–50 teraOPS).

A portion of the current CCPP is funded by the DOE SC Scientific Discovery Through Advanced Computing (SciDAC) program. It is anticipated that applications to this Notice that are selected for support will be funded by the SciDAC portion of the CCPP. The goal of SciDAC is to develop the scientific computing software and hardware infrastructure needed to use terascale computers to advance research programs in Basic Energy Sciences, Biological and Environmental (including climatic) Research, Fusion Energy Sciences, and High Energy Physics, and Nuclear Physics. SciDAC creates a scientific computing software infrastructure that bridges the gap between the advanced computing technologies being developed by the computer industry and the scientific research programs sponsored by the DOE SC. All applications chosen for funding in response to this Notice will therefore explicitly state how the proposed research will contribute to a measurably improved ability to use terascale computing to address important climatic change prediction issues.

Through SciDAC, the CCPP is presently supporting the Community Climate System Model (CCSM) Consortium Project at six DOE National Laboratories (Argonne, Lawrence Berkeley, Lawrence Livermore, Los Alamos, Oak Ridge, and Pacific Northwest). The CCSM Consortium Project includes collaboration with the National Aeronautics and Space Administration's Data Assimilation Office and the National Center for Atmospheric Research. Software engineering is a key focus of the Project, and throughput has increased for the atmospheric, land surface, oceanic, and sea ice components of the CCSM as a result of Project activities. Other Project accomplishments include completion and release of a new version of the Parallel Ocean Program (POP), including improved performance on vector machines; development of the new hybrid vertical-coordinate version of POP, called HYPOP; and improvement of the dynamic core of the Community Sea Ice Model (CSIM). In addition, portability of the CCSM has been significantly enhanced by the Project. Where appropriate, applications to this notice are encouraged to include collaboration with the ongoing DOE CCSM Consortium Project.

Request for Grant Applications

This notice requests applications for grants for one of the three following activities, all of which are to be directed at development of simulation models (computer programs) for prediction of climate decades to centuries in the future *and* contribute to an enhanced ability to use terascale computing to implement such models:

(1) Renewal of projects presently funded by the CCPP. Applications for renewal funding should include clear descriptions of progress made with present CCPP support. Such descriptions should be part of the technical portion of the application (*see* below).

(2) Development of improved representation of key climatic processes (surface processes, convective transport processes, etc.,) that accurately simulate these processes in general circulation models (GCMs) used to study potential decadal-to-centennial climatic variability and change with subcontinental spatial accuracy, and which are executed on supercomputers.

(3) Development of improved or new mathematical techniques, model formulations, and computer algorithms

for atmosphere, ocean, and coupled atmosphere-ocean GCMs that more accurately and efficiently describe and predict global climatic system behavior on decadal to centennial time scales and on subcontinental space scales, and which are executed on supercomputers.

All applications submitted in response to this notice must explicitly state how the proposed research will support accomplishment of the BER CCRD's Long Term Measure of Scientific Advancement to deliver improved data and models for policy makers to determine acceptable levels of greenhouse gases in the atmosphere. All applications should also state clearly how the proposed research would contribute to a measurably enhanced ability to use terascale computing to address critical climatic change prediction issues.

Applicants seeking renewal of present grants should demonstrate, in their application, (a) the continued relevance of their work to the goal of advancing the science of decade-to-multi-century climatic change prediction and the contribution their work makes to an improved ability to use terascale computing to address climatic change issues; (b) the quality and relevance of work conducted under previous support to these goals, including a listing of publications and presentations; and (c) relevant contributions to the development of DOE climate modeling programs, including participation in the organization of meetings and workshops and collaborations with other DOE-supported investigators. The technical portion of applications should include a section titled ''Accomplishments under Previous Support'' that addresses items (b) and (c) above. Applicants should be prepared to provide, on short notice, complete legible copies of all publications, reports, etc., listed in this section, should they be required for the review process.

Applicants seeking funds to develop improved representation of key climatic processes for inclusion in GCMs should focus their applications on efforts to more accurately describe and include such processes, and their interactions with other aspects of the simulated climatic system, in GCMs. These projects might explore opportunities, methods, and collaborations for incorporating the results of the CCSP's observational and experimental programs (such as the DOE Atmospheric Radiation Measurement [ARM] program) into model components that accurately describe climatic system processes at the temporal and spatial scales typically used for decade-to-multi-century climatic change prediction. Applications for such activities must include a clear plan for the dissemination of any developed model code, and necessary documentation, to the climate modeling community.

Applicants seeking funds to develop improved or new mathematical techniques and numerical algorithms should target their applications toward methods that can be incorporated into GCMs running on computers capable of performing over 10 teraOPS. Applicants must demonstrate the role of their proposed research in improving the accuracy and/or computational efficiency of GCMs envisioned for use in making forecasts of long-term climatic change. Foci of the applications might include, but need not be limited to, atmospheric and oceanic dynamics and transport, surface energy and mass exchanges, atmospheric radiative transfer, ocean convection, and sea-ice dynamics and thermodynamics. Applications for such activities must include a clear plan for the dissemination of any developed model code, and necessary documentation, to the climate modeling community.

To ensure that the CCPP meets both the broad needs of the climate modeling research community and the specific needs of the CCRD, successful applicants will participate as members of the CCPP Science Team along with scientists from related CCRD and SC programs. Costs for participation in Science Team meetings and workshops should be included in each application. Yearly estimates for Science Team travel should be based on one trip of five days to Washington, DC, one trip of five days to San Francisco, CA, and one trip of five days to Denver, CO.

Program Funding

It is anticipated that about $4,000,000 will be available for awards in Fiscal Year 2004, contingent on the availability of appropriated funds. Project start dates of about September 15, 2004, are expected. Applications may request project support up to three years, with out-year support contingent on availability of appropriated funds, progress of the research, and programmatic needs. It is anticipated that a substantial fraction of available funds will be used to support renewal of existing research projects under (1) above. The allocation of funds within the other two research areas will depend on the quality of applications received. Typical awards are expected to be about $200,000 per year, but individual awards may deviate from this amount based on variation in the scope of work proposed in the applications. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Preapplications

Potential applicants are strongly encouraged to submit a brief (1–2 pages of narrative), concise, and clear preapplication describing the proposed research project objectives and methods. These will be reviewed relative to the terms of this notice. Principal investigator name, organization, telephone number, and e-mail address are essential parts of the preapplication. A response to each preapplication, discussing the potential program relevance of a formal application, generally will be communicated within 30 days of receipt. There is no deadline for the submission of preapplications, but applicants should allow sufficient time to meet the application deadline of March 15, 2004. SC's preapplication policy is on its Grants and Contracts Web Site at: *http://www.sc.doe.gov/production/grants/preapp.html.*

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

For renewals, progress on previous funded research will be an important criterion for evaluation. The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part

605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.*

In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research, on a separate page with the name of the applicant, mailing address, phone, Fax and e-mail listed. *Applicants who have had prior support must include a Progress Section with a brief description of results and a list of publications derived from that funding.* Attachments should include short (2 pages) curriculum vitae, a listing of all current and pending Federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of the National Institutes of Health (NIH) or the National Science Foundation (NSF) (two to three pages).

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on December 23, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 04–201 Filed 1–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–07; Microbial Genome Program

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research in support of the Microbial Genome Program (MGP), focused on microbes of interest to the DOE, *e.g.*, those involved in environmental processes, including waste remediation, carbon management, biomass conversion, and energy production. This announcement is focused on: (1) Whole genome-based systems or functional biology of DOE mission relevant microorganisms; (2) bioinformatics tools for high-throughput microbial genome annotation focused on currently unannotated genes and sequences, and pathway/function modeling; and (3) technologies and approaches to assess consortia and environmental diversity of hard-to-culture microbes. Under this announcement, applications to carry out sequencing of microbial genomes will be ineligible. A separate process is available for the nomination and prioritization of sequencing candidates for the DOE Joint Genome Institute. This announcement emphasizes the use of already sequenced genomes that address DOE mission needs.

DATES: Preapplications referencing Program Notice DE–FG01–04ER04–07, should be received by January 29, 2004.

Formal applications in response to this notice should be received by 4:30 p.m., e.d.t., April 15, 2004, to be accepted for merit review and funding in Fiscal Year 2004.

ADDRESSES: Preapplications referencing Program Notice DE–FG01–04ER04–07, should be sent to Dr. Daniel W. Drell, SC–72/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. E-mail is strongly encouraged for submitting preapplications using the following address: *kim.laing@science.doe.gov.*

Formal applications referencing Program Notice DE–FG01–04ER04–07, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS Web site. IIPS offers the option of using multiple files; please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, SC–72/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 903–4742, Email: *daniel.drell@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The Microbial Genome Program (MGP), a key element of the DOE Genomes to Life Program (*http://doegenomestolife.org*) supports key DOE missions by leveraging microbial DNA sequence information to further the understanding and application of microbiology relating to environmental processes, including waste remediation, carbon management, biomass conversion, and energy production. The determination of microbial genome sequences is a mission of the DOE Joint Genome Institute (JGI) and follows a separate process independent of this solicitation. Over the last nine years, sequencing of microorganisms that live in a variety of environments has provided a considerable information base for scientific research related not only to DOE missions but also to other Federal agency missions and U.S. industry. Applications are now being sought in three complementary areas: Whole-genome based systems and functional analyses; bioinformatics applied to extracting additional information from microbial genome sequences; and the characterization of the diversity of microbial consortia and/or hard-to-culture microbes that mediate processes of relevance to the DOE. Each application must clearly state which area is being addressed; if an applicant wishes to address more than one area, the application must clearly describe the expected advantages of an integrated approach.

Candidate microorganisms for study can comprise archaea, bacteria, algae or fungi or communities made up of bacteria, archaea, algae and/or fungi that mediate or catalyze metabolic events of energy or environmental importance. Preference will be given to those applicants using microbes, for which complete or near-complete genomic sequencing information in the public domain exists. (*See http://*

www.ornl.gov/microbialgenomes/progress.html for a current list of microbes that have been and are being sequenced.) Priority will be given to studies on those microbes or microbial consortia that can bioremediate metals and radionuclides, generate energy compounds (*e.g.*, hydrogen or methane), convert biomass to intermediate or final energy products, or that are involved in environmental carbon management, *e.g.*, fix CO2. For studies on microbes that are members of communities, at least one member should be a fully sequenced microbe. Strict or opportunistic pathogens or parasites will not be considered.

(1) *Systems and Functional Analysis.* Even simple microbes are constituted from thousands of genome-derived proteins. Many of these proteins do not act alone; rather, they act as parts of protein complexes that carry out functions not mediated by the individual gene products themselves. Multi-protein complexes often are not static, they are dynamic in response to environmental influences, intracellular conditions and metabolic demands, and whether the cell is responding to a stress or preparing to divide. The DOE MGP is particularly interested in improved and high-throughput approaches to functional characterization (*e.g.*, transporters, environmental sensors, redox enzymes, cytoskeletal components, DNA repair systems, metal reductases, biodegradative enzymes, etc.) of the multi-protein complexes within sequenced microbes participating in processes related to the aforementioned mission areas. Coordinated expression of pathways and processes involved in the aforementioned areas of mission interest (*e.g.*, bioremediation, carbon sequestration, and energy production) in response to environmental variations or experimental manipulations is also a priority. It is estimated that between three and six awards for a total of up to $1 million could be available for this area initiating in Fiscal Year 2004.

(2) *Bioinformatics.* By December 2003, completed genomic sequences of perhaps 145 archaea and bacteria had been completed and published, many as a direct result of DOE Microbial Genome Program funding. For several microbes, complete sequences of close evolutionary relatives now or will soon exist. Computational comparative genomics can illuminate evolutionary pathways to complement traditional phenotype-based analyses, provide data for the prediction of gene function between organisms, and contribute to modeling pathways. The value of such comparative functional analyses is highlighted by the remarkable frequency of novel open reading frames in microbial genome sequences (up to half the predicted genes in many cases) that currently lack any annotation. The evolutionary conservation of open reading frames and certain protein functions between microbes and more complex organisms (including human) emphasizes the value of microbial sequences for understanding the functions of uncharacterized microbial (and, potentially, human) genes. To this end, computational methods for high-throughput interspecies genomic comparisons are an area of particular interest for this solicitation. Applications are requested that propose ways in which microbial sequence data from all sources can be analyzed, compared, annotated, and used to predict the function of homologous genes in both prokaryotic and eukaryotic organisms. Of particular interest are those approaches to predicting functions for currently unannotated open reading frames and approaches to predicting associations of genes in functional multi-protein complexes. Thus, this notice solicits applications for research into:

(a) Novel computational tools to increase the value of microbial genome sequence information, such as improved approaches for identifying noncoding sequence elements that may participate in regulatory or genomic management (*i.e.*, binding to intracellular scaffolding or membrane components) or that affects 3–D structure and chemistry of the genomic DNA;

(b) Computational tools to identify and model gene expression networks, or to identify likely participants in higher-order multi-protein complexes;

(c) Computational analyses to support existing techniques, such as (but not limited to) adjusting the BAC sequence size or primer walking, that would enable the more efficient finishing of draft sequences of microbial genomes. Applications should identify those problems that require the most resources to finish a sequence and propose computational steps to reduce the time and effort involved.

Of special interest will be methods that use unique DOE resources in massively parallel, high-capacity supercomputers (machines in the multi-teraflop range). It is expected that computational tools developed under these awards will be widely distributed to the scientific community (*e.g.*, via a World Wide Web site) and some level of user support will be available. It is anticipated that between three and six awards for a total of up to $1 million could be available for this area initiating in Fiscal Year 2004.

(3) *Consortia and Hard-to-Culture Microbes.* Most of our current knowledge of microbiology is derived from individual species that either cause diseases or grow as monocultures under laboratory conditions and are thus easy to study. The preponderance of species in the environment does neither and is thus largely opaque to scientific study. Many are thought to grow as part of interdependent consortia in which one species supplies a nutrient necessary for the growth of another. Virtually nothing is known of the organization, membership, or functioning of these consortia, especially those involved in environmental processes in which DOE is interested. Technologies and approaches are sought that will enable genomic analyses of microbial consortia as well as analyses of the genomic information content and diversity of those species that have proven refractory to laboratory culture but are plentiful in environments challenged with metal and radionuclide wastes, or involved in carbon sequestration. It is anticipated that between three and six awards totaling up to $1 million could be available for this area initiating in Fiscal Year 2004.

Preapplicaitons

Potential applicants are strongly encouraged to submit a brief preapplication that consists of one to two pages of narrative describing the research objectives and technical approach(es). Preapplications will be reviewed relative to the scope and research needs of both the BER Microbial Genome Program, as well as the Genomes to Life Program into which the Microbial Genome Program will become fully integrated in Fiscal Year 2008. Preapplication review criteria are more fully outlined in the summary paragraph and in the **SUPPLEMENTARY INFORMATION**. Principal investigator telephone number, Fax number, and e-mail address are required as part of the preapplication. A response to each preapplication discussing the potential programmatic relevance of a formal application will be communicated by e-mail to the Principal Investigator within 14 to 21 days of receipt. Any renewal applications must include a list of publications resulting from previous DOE Microbial Genome Program funding.

Program Funding

It is anticipated that approximately $3 million will be available for all MGP awards in Fiscal Year 2004, with as

many as 15 awards anticipated, contingent on availability of appropriated funds in Fiscal Year 2004, and the size of the awards. Multiple year funding is expected up to a maximum of three years, also contingent on availability of funds and progress of the research. At the end of three years, the Microbial Genome Program will transition fully into the DOE Genomes to Life Program and applications for continuation of ongoing research started under this Program will not be accepted. Awards are expected to range from $150,000 to $450,000 per year, total costs, with terms of one to three years. Reasonable increases in second and third year budget periods can be requested. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Each response to this solicitation will be evaluated for relevance to: (a) The successful completion of the BER long term measure to characterize the multiprotein complexes (or the lack thereof) involving a scientifically significant fraction of microbe proteins; (b) the development of computational models to direct the use and design of microbial communities to clean up waste, sequester carbon, or produce hydrogen; or (c) to develop science-based solutions for the cleanup and long term monitoring of DOE contaminated sites.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-Federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Office of Science (SC), as part of its grant regulations (10 CFR 605.11(b)) requires that a grantee funded by SC and performing research involving recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'' (51 FR 16958, May 7, 1986), or such later guidelines as may be published in the **Federal Register**.

The Project Description must be 20 pages or less, exclusive of attachments. It must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone, fax and email listed. The application must include letters of intent from collaborators (briefly describing the intended contribution of each to the research), and short curriculum vitaes, consistent with the National Institutes of Health (NIH) guidelines, for the applicant and any co-PIs. To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Science Financial Assistance Program 10 CFR part 605. Access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/grants/grants.html.*

Other useful Web sites include:

MGP home page—*http://www.ornl.gov/sci/microbialgenomes/.*

DOE Genomes to Life Program: *http://DOEGenomestoLife.org.*

DOE Joint Genome Institute Microbial Web page: *http://www.jgi.doe.gov/JGI_microbial/html/.*

GOLD Microbial Genome Database: *http://wit.integratedgenomics.com/GOLD/.*

GenBank home page—*http://www.ncbi.nlm.nih.gov/.*

Human Genome home page—*http://www.ornl.gov/hgmis.*

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on December 23, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 04–202 Filed 1–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Tuesday, January 20, 2004—2:45 p.m.–6 p.m. (Pre-meeting tour of Idaho Nuclear and Technology Engineering Center, INTEC, for INEEL CAB members 8 a.m. to 2:30 p.m.)

Wednesday, January 21, 2004—8 a.m.–5 p.m.

Opportunities for public participation will be held Tuesday, January 20 from 5:45 to 6 p.m., and on January 21 from 11:15 to 11:30 a.m. and 3:20 to 3:35 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Hinman, INEEL CAB Administrator, North Wind, Inc., P.O. Box 51174, Idaho Falls, ID 83405, Phone (208) 528–8718, or visit the Board's Internet Home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda:

- Cleanup and closure of the Idaho Nuclear Technology and Engineering Center (INTEC)
- New Risk-Based End State Vision for the INEEL
- Conduct process to select new members

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items

should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gerald C. Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations. This notice is being published less than 15 days before the date of the meeting due to programmatic issue that has to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Peggy Hinman, INEEL CAB Administrator, at the address and phone number listed above.

Issued at Washington, DC on December 30, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–198 Filed 1–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, January 26, 2004 1 p.m.–8:30 p.m.

ADDRESSES: Cities of Gold Hotel, 10–A Cities of Gold Road, Pojoaque, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m.
Call to Order by Ted Taylor, Deputy Designated Federal Officer (DDFO); Roll Call and Establishment of a Quorum; Welcome and Introductions by Jim Brannon, Board Chair; Approval of Agenda; Approval of November 19, 2003 Meeting Minutes

1:15 p.m.
Public Comment

1:30 p.m.
Board Business
- Recruitment/Membership Update
- Report from Chairman Brannon
- Report from DOE, Ted Taylor, DDFO
- Report from Executive Director, Menice S. Manzanares
- 2004 Meeting Schedule (Locations)
- New Business

2:30 p.m.
Break

2:45 p.m.
Report from Committees
- Environmental Monitoring, Surveillance and Remediation
- Waste Management Committee
- Community Involvement Committee
- Budget Committee
- Ad Hoc Committee on CAB Self Evaluation

5 p.m.
Dinner Break

6 p.m.
Environmental Management Presentation

7:30 p.m.
Break

7:45 p.m.
Public Comment

8 p.m.
Recap of Meeting

8:30 p.m.
Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.-4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on December 30, 2003.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 04–199 Filed 1–5–04; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

Thursday, February 5, 2004—9 a.m.–5 p.m.

Friday, February 6, 2004—8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel Richland, Hanford House, 802 George Washington Way, Richland, WA, Phone: (509) 946–7611, Fax: (509) 943–8564.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352;

Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, February 5, 2004

- C–106 Tank Closure Demonstration Plan
- Hanford Solid Waste Environmental Impact Statement
- RAP workshop on Central Plateau Cleanup Strategy and Site Wide Waste Management—Groundwater
- M–91 Change Package

Friday, February 6, 2004

- New groundwater issues in K & D Areas
- BCC proposal for public budget process
- Committee Updates
- Adoption of Board Advise
- Identification of Topics for the April Board Meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on December 30, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–200 Filed 1–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–121–001, FERC Form 121]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

December 24, 2003.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of October 9, 2003 (68 FR 57678–79) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by January 30, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at (202) 395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–121–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 121 ''Application for Determination of the Maximum Lawful Price under the Natural Gas Policy Act''
2. *Sponsor:* Federal Energy Regulatory Commission
3. *Control No.* 1902–0038.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Section 503 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3413. In Order No. 616 (July 14, 2000), the Commission reinstated provisions for making well category determinations for NGPA Section 107 high cost gas wells. Natural gas wells with affirmative determinations under Section 503 of the NGPA are eligible for a tax credit. Specifically, Section 29 of the Internal Revenue Code allows natural gas producers to claim a credit for qualified

fuels determined to be high-cost natural gas production. These include gas from geopressured brine, Devonian shale, coal seams, and tight formations from wells completed in a previously approved designated tight formation area.

5. One of three applicability rules must be met for any one of the above gas well completions to qualify for the credit. The three applicability rules are as follows:

i. A well where the surface drilling began after December 31, 1979 but before January 1, 1993; or

ii. A recompletion commenced after January 1, 1993, in a well where the surface drilling began after December 31, 1979, but before January 1, 1993; or

iii. A recompletion commenced after December 31, 1979, but before January 1, 1993, where such, gas could not have been produced from any completion location in existence in the well bore before January 1, 1980.

Jurisdictional agencies are state agencies that conduct the initial well determination and forward the completed application to the Commission. The general filing requirements for filing with a jurisdictional agency and the Commission are a FERC Form 121, all available well completion reports, well logs with their headings, a location plat, and an affidavit. These documents are the minimum requirements to support a request for determination. However, the jurisdictional agency may require additional documentation as it finds necessary. In addition, the Commission may request any other explanatory statement with factual findings and references or a copy of all other materials that the jurisdictional agency relied upon during the course of making the determination, in order to assist the Commission in its review of the initial determination.

Review of an initial determination involves collating all of the information from the FERC Form No. 121 application and the completion reports, well logs, location plat, and affidavit. The completion interval on the FERC Form 121 application is identified in the completion report, which illustrates the type of natural gas production treatment (*i.e.,* perforation, acidization, fracturing, etc.). Evidence of natural gas production is further supported by the well log(s), which explicitly distinguish the interval boundaries within the formation and identify natural gas characteristics. The location plat is a map that identifies the surface location of the well and the completion location in the well. Finally, the affidavit is a statement made by the applicant, under oath, that the natural gas is produced from one of three applicability rules identified above. (*See* FERC–568 for supporting documentation)

The Commission's staff uses the information to review the initial determinations in order to ascertain if the submissions are eligible for the Section 29 tax credit. In fiscal years 2001 and 2002 the Commission processed over 2,500 determinations. For fiscal year 2003, the Commission processed an additional 1,600 determinations for a total of over 4,100 determinations since the issuance of Order 616 and the implementation of the program in October 2000. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 270.

6. *Respondent Description:* The respondent universe currently comprises 1,400 companies (on average per year) subject to the Commission's jurisdiction.

7. *Estimated Burden:* 1,050 total hours, 1,400 respondents (average per year), 1 response per respondent, and .25 hours per response (average).

8. *Estimated Cost Burden to respondents:* 350 hours per year (1,050 hours for 3 year period) 350/2080 hours per year × $107,185 per year = $18,036. The cost per respondent is equal to $13.00.

Statutory Authority: Section 503 of the Natural Gas Policy Act of 1978, 15 U.S.C. 3413.

Linda Mitry,

Acting Secretary.

[FR Doc. 04–150 Filed 1–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–568–001, FERC–568]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

December 24, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of October 9, 2003 (68 FR 57680–82), and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by January 30, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–568–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–568 ''Well Determinations''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0112.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of section 503 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3413. In Order No. 616 (July 14, 2000), the Commission reinstated provisions for making well category determinations for NGPA section 107 high-cost gas wells. Natural gas wells with affirmative determinations under section 503 of the NGPA are eligible for a tax credit. Specifically, section 29 of the Internal Revenue Code allows natural gas producers to claim a credit for qualified fuels determined to be high-cost natural gas production. These include gas from geopressured brine, Devonian shale, coal seams, and tight formations from wells completed in a previously approved designated tight formation area.

5. One of three applicability rules must be met for any one of the above gas well completions to qualify for the credit. The three applicability rules are as follows:

i. A well where the surface drilling began after December 31, 1979, but before January 1, 1993; or

ii. A recompletion commenced after January 1, 1993, in a well where the surface drilling began after December 31, 1979, but before January 1, 1993; or

iii. A recompletion commenced after December 31, 1979, but before January 1, 1993, where such gas could not have been produced from any completion location in existence in the well bore before January 1, 1980.

Jurisdictional agencies are State agencies that conduct the initial well determination and forward the completed application to the Commission. The general filing requirements for filing with a jurisdictional agency and the Commission are a FERC Form 121, all available well completion reports, well logs with their headings, a location plat, and an affidavit . These documents are the minimum requirements to support a request for determination. However, the jurisdictional agency may require additional documentation as it finds necessary. In addition, the Commission may request any other explanatory statement with factual findings and references or a copy of all other materials that the jurisdictional agency relied upon during the course of making the determination, in order to assist the Commission in its review of the initial determination.

Review of an initial determination involves collating all of the information from the FERC Form No. 121 application and the completion reports, well logs, location plat, and affidavit. These latter documents make up the documents submitted under FERC–568. The completion interval on the FERC Form 121 application is identified in the completion report, which illustrates the type of natural gas production treatment (*i.e.,* perforation, acidization, fracturing, *etc.*). Evidence of natural gas production is further supported by the well log(s), which explicitly distinguish the interval boundaries within the formation and identify natural gas characteristics. The location plat is a map that identifies the surface location of the well and the completion location in the well. Finally, the affidavit is a statement made by the applicant, under oath, that the natural gas is produced from one of three applicability rules identified above.

The Commission's staff uses the information to review the initial determinations in order to ascertain if the submissions are eligible for the section 29 tax credit. In fiscal years 2001 and 2002 the Commission processed over 2,500 determinations. For fiscal year 2003, the Commission processed an additional 1,600 determinations for a total of over 4,100 determinations since the issuance of Order 616 and the implementation of the program in October 2000. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 270.

6. *Respondent Description:* The respondent universe currently comprises 1,400 companies (on average per year) subject to the Commission's jurisdiction

7. *Estimated Burden:* 8,414 total hours per year (25,242 hours for 3 year period), 1,400 respondents (average per year), 1 response per respondent, and 6.01 hours per response (average).

8. *Estimated Cost Burden to Respondents:* 8,414 hours/2,080 hours per year × $107,185 per year = $433,584. The cost per respondent is equal to $310.00.

Statutory Authority: Section 503 of the Natural Gas Policy Act of 1978, 15 U.S.C. 3413.

Linda Mitry,

Acting Secretary.

[FR Doc. 04–151 Filed 1–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Rate Order No. WAPA–105

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–105 and Rate Schedule L–F5 placing provisional rates for the Loveland Area Projects (LAP) firm electric service into effect on an interim basis effective February 1, 2004. The provisional rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expenses, and repayment of required investment within the allowable period.

DATES: Rate Schedule L–F5 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after February 1, 2004, and will be in effect until the Commission confirms, approves, and places the provisional rates into effect on a final basis for 5 years ending December 31, 2008, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald W. Steinbach, Power Marketing Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7322, e-mail *steinbach@wapa.gov.*

SUPPLEMENTARY INFORMATION: The DOE Deputy Secretary approved Rate

Schedule L–F4 for LAP firm electric service on an interim basis on January 6, 1994 (Rate Order No. WAPA–61, 59 FR 3339, January 21, 1994). The Commission confirmed and approved the rate schedule on a final basis on July 14, 1994, under Commission Docket No. EF94–5181–000 (68 FERC 62,040). Rate Schedule L–F4 was approved for 5 years beginning February 1, 1994, ending January 31, 1999. Rate Order No. WAPA–82 (63 FR 58033, October 29, 1998) extended the rates for 2 years, beginning February 1, 1999, through January 31, 2001. Rate Order No. WAPA–89 (65 FR 44044, July 17, 2000) extended the rates again beginning February 1, 2001, through September 30, 2003. Rate Order No. WAPA–103 (68 FR 33119, June 3, 2003) extended the rates a third time beginning October 1, 2003, through March 31, 2004.

Under Rate Schedule L–F4, the existing composite rate is 21.70 mills per kilowatthour (mills/kWh). The energy rate is 10.85 mills/kWh and the capacity rate is $2.85 per kilowattmonth (kWmo). Under Rate Schedule L–F5, the first step of the provisional rates for LAP firm electric service will result in a composite rate of 23.44 mills/kWh. The energy rate will be 11.72 mills/kWh and the capacity rate will be $3.08 per kWmo. This will result in an increase of 8 percent effective February 1, 2004. The second step of the provisional rates for LAP firm electric service will result in a composite rate of 23.90 mills/kWh. The energy rate will be 11.95 mills/kWh and the capacity rate will be $3.14 per kWmo. This will result in an additional increase of 2 percent effective October 1, 2004.

Provisional Rates for LAP Firm Electric Service

The provisional rates for LAP firm electric service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchased power, operation and maintenance expenses (O&M), and other annual expenses. The annual revenue requirement for firm electric service is allocated equally between capacity and energy.

The provisional rates for LAP firm electric service are developed under the DOE Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary delegated (1) The authority to develop power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR 903, effective on September 18, 1985 (50 FR 37835).

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR 903, have been followed by Western in developing these provisional rates.

Rate Order No. WAPA–105, confirming, approving, and placing the proposed LAP firm electric service rates into effect on an interim basis, is issued. The new Rate Schedule L–F5 will be submitted promptly to the Commission for confirmation and approval on a final basis.

Dated: December 24, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

Order Confirming, Approving, and Placing the Loveland Area Projects Firm Electric Service Rates Into Effect on an Interim Basis

These rates are developed under the DOE Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary delegated (1) The authority to develop power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR 903. Procedures for approving Power Marketing Administration rates by the Commission are found at 18 CFR 300.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Administrator: The Administrator of Western Area Power Administration.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kW.

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in dollars per kWmo.

Composite Rate: The rate for commercial firm power and is the total annual revenue requirement for capacity and energy divided by the total annual firm energy sales under contract. It is expressed in mills/kWh and used for comparison purposes.

Criteria: The Post-1989 General Power Marketing and Allocation Criteria for the sale of energy with capacity from the Pick-Sloan Missouri Basin Program—Western Division and the Fryingpan-Arkansas Project.

Customer: An entity with a contract for and receiving firm electric service from Western's Rocky Mountain Region.

DOE Order RA 6120.2: An order outlining power marketing administration financial reporting and rate-making procedures.

Energy: That which does or is capable of doing work. It is measured in terms of the work it is capable of doing over a period of time. It is expressed in kWh.

Energy Rate: The rate which sets forth the charges for energy. It is expressed in mills per kWh and applied to each kWh delivered to each customer.

Firm: A type of product and/or service that is available at the time requested by the customer.

FY: Fiscal year; October 1 to September 30.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWmo: Kilowattmonth—the electrical unit of the monthly amount of capacity.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kilowattyear: Kilowattyear—the electrical unit of the yearly amount of capacity.

L–F4: Loveland Area Projects existing firm electric service rate schedule (expires March 31, 2004, or until superseded).

L–F5: Loveland Area Projects provisional firm electric service rate schedule (effective February 1, 2004).

M&I: Municipal and industrial water development.

mills/kWh: Mills per kilowatthour—the unit of charge for energy (equals one tenth of a cent or one thousandth of a dollar).

Power: Capacity and energy.

Preference: The requirements of Reclamation Law which provide that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Provisional Rates: Rate schedules which have been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary of DOE.

Rate Brochure: A document prepared for public distribution explaining the rationale

and background of the rate proposal contained in this rate order and dated June 2003.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework in which Western markets power.

Revenue Requirement: The revenue required to recover operation and maintenance expenses, purchased power and transmission service expenses, interest, deferred expenses, repayment of Federal investments, and other assigned costs.

Tiered Rate: Pick-Sloan Missouri Basin Program—Eastern Division rate applied to energy in excess of 60% load factor.

Effective Date

The provisional rates will become effective on an interim basis on the first day of the first full billing period beginning on or after February 1, 2004, and will be in effect pending the Commission's approval of them or substitute rates on a final basis for 5 years ending December 31, 2008, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR 903, have been followed by Western in developing these rates. The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. The proposed rate adjustment was initiated on March 25, 2003, when letters announcing informal meetings to discuss the proposed firm electric service rate adjustment were mailed to all LAP preference customers and interested parties. These informational meetings were held on April 14, 2003, in Denver, CO, and on April 15, 2003, in Lincoln, NE. At these informal meetings, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

2. On June 6, 2003, letters were mailed to all LAP preference customers and interested parties announcing the upcoming publication of a **Federal Register** notice (FRN) for proposed LAP rates and announcing dates and times for public information and public comment forums.

3. An FRN was published on June 13, 2003 (68 FR 35401), officially announcing proposed LAP rates, initiating the public consultation and comment period, and announcing the public information and public comment forums.

4. On June 19, 2003, letters were mailed to all LAP preference customers and interested parties transmitting a copy of the FRN published on June 13, 2003 (68 FR 35401) initiating the public rate process.

5. The public information forums were held on July 14, 2003, beginning at 1 p.m. MDT, in Denver, CO, and again on July 15, 2003, beginning at 9 a.m. CDT, in Lincoln, NE. Western provided detailed explanations of the proposed LAP rates, provided a list of issues that could change the proposed rates, and answered questions. A rate brochure detailing the proposed rates was provided at the forums.

6. The public comment forum was held on August 6, 2003, beginning at 1 p.m. MDT, in Denver, CO. Western gave the public an opportunity to comment for the record. No oral comments were made and no written comments were received during the comment forum.

7. Four comment letters were received during the consultation and comment period. The consultation and comment period ended September 11, 2003. All formally submitted comments have been considered in preparing this rate order.

8. Western's Rocky Mountain Region provided a Web site with all of the letters, time frames, dates and locations of forums, documents discussed at the information meetings, **Federal Register** notices and all other information regarding this rate process for customer access.

Project Descriptions

Loveland Area Projects

The Post-1989 General Power Marketing and Allocation Criteria (Criteria), published in the **Federal Register** on January 31, 1986 (51 FR 4012), integrated the resources of the Pick-Sloan Missouri Basin Program—Western Division (P–SMBP—WD) and the Fryingpan-Arkansas Project (Fry-Ark). This operational and contractual integration, known as LAP, allowed an increase in marketable resource, simplified contract administration, and established a blended rate for LAP power sales.

However, the P–SMBP—WD and Fry-Ark retain separate financial status. For this reason, separate Power Repayment Studies (PRS) are prepared annually for each project. These PRSs are used to determine the ability of the power rate to generate sufficient revenue to repay project investment and costs during each project's prescribed repayment period. The revenue requirement of the Fry-Ark PRS is combined with the P–SMBP—WD revenue requirement derived from the Pick-Sloan Missouri Basin Program (P–SMBP) PRS, to develop one rate for LAP firm electric sales.

Pick-Sloan Missouri Basin Program—Western Division

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of December 22, 1944 (Pub. L. 78–534, 58 Stat. 877, 891). The Missouri River Basin Project, later renamed the Pick-Sloan Missouri Basin Program to honor its two principal authors, has been under construction since 1944. The P–SMBP encompasses a comprehensive program of flood control, navigation improvement, irrigation, municipal and industrial (M&I) water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota and Wyoming.

The Colorado-Big Thompson, Kendrick, Riverton and Shoshone projects were administratively combined with P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are known as the ''Integrated Projects'' of the P–SMBP. The Riverton Project was reauthorized as a unit of the P–SMBP in 1970.

The P–SMBP—WD and the Integrated Projects include 19 powerplants. There are six powerplants in the P–SMBP—WD: Glendo, Kortes, and Fremont Canyon powerplants on the North Platte River; Boysen and Pilot Butte on the Wind River; and Yellowtail powerplant on the Big Horn River.

In the Colorado-Big Thompson Project, there are also six powerplants. Green Mountain powerplant on the Blue River is on the West Slope of the Rocky Mountains. Marys Lake, Estes, Pole Hill, Flatiron and Big Thompson powerplants are on the East Slope of the Continental Divide.

The Kendrick Project has two power production facilities: Alcova and Seminoe powerplants. Power production facilities in the Shoshone Project are Shoshone, Buffalo Bill, Heart Mountain and Spirit Mountain powerplants. The only production facility in the North Platte Project is the Guernsey powerplant.

Fryingpan-Arkansas Project

The Fry-Ark is a transmountain diversion development in southeastern Colorado authorized by the Act of Congress on August 16, 1962 (Pub. L. 87–590, 76 Stat. 389, as amended by Title XI of the Act of Congress on October 27, 1974 (Pub. L. 93–493, 88 Stat. 1486, 1497). The Fry-Ark diverts water from the Fryingpan River and other tributaries of the Roaring Fork River in the Colorado River Basin on the West Slope of the Rocky Mountains to the Arkansas River on the East Slope of the Continental Divide. The water diverted from the West Slope, together with regulated Arkansas River water, provide supplemental irrigation and M&I water supplies and produce hydroelectric power. Flood control, fish and wildlife enhancement and recreation are other important purposes of Fry-Ark. The only generating facility in Fry-Ark is the Mt. Elbert Pumped-Storage Powerplant on the East Slope of the Rocky Mountains.

Power Repayment Studies

PRSs are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the LAP power function. Repayment criteria are based on law, policies, DOE Order RA 6120.2 and authorizing legislation.

Existing and Provisional Rates

Existing and provisional rates for LAP firm electric service are designed to recover an annual revenue requirement that includes the investment repayment, interest, purchased power, and O&M expenses. The provisional rates reflect increased purchased power expenses due to the extended poor water conditions experienced in the region as well as costs associated with increased O&M expenses. The provisional rates will be implemented in two steps. The first step is to become effective on the first day of the first full billing period beginning on or after February 1, 2004. The second step is to become effective on the first day of the first full billing period beginning on or after October 1, 2004. Under Rate Schedule L–F5, the provisional rates for LAP firm electric service will result in an overall composite rate increase of approximately 10 percent. A

comparison of the existing and provisional rates for LAP firm electric service follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES LAP FIRM ELECTRIC SERVICE

Firm electric service	Existing rates	First step provisional rates and percent change, effective Feb. 1, 2004	Second step provisional rates and percent change, effective Oct 1, 2004
Rate Schedule	L–F4	L–F5	L–F5
Composite Rate (mills/kWh)	21.70	23.44 (8%)	23.90 (2%)
Firm Capacity ($/kWmo)	$2.85	$3.08 (8.1%)	$3.14 (1.9%)
Firm Energy (mills/kWh)	10.85	11.72 (8%)	11.95 (2%)

Certificate of Rate

Western's Administrator has certified that the LAP firm electric service rates under Rate Schedule L–F5 are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

Discussion

According to Reclamation Law, Western must establish power rates sufficient to recover operation, maintenance, and purchased power expenses, and repay the Federal Government's investment in generation and transmission facilities. Rates must also be set to cover interest expenses on the unpaid balance of facilities' investments, replacements and additions, and certain non-power costs in excess of the irrigation users' ability to repay.

The Criteria were published in the **Federal Register** on January 31, 1986 (51 FR 4012). The Criteria operationally and contractually integrated the resources of the P–SMBP—WD and Fry-Ark. The integrated resources are referred to as LAP. A blended rate was established for the sale of LAP power. The P–SMBP—WD piece of the revenue requirements for the LAP firm electric service rates was developed from the revenue requirement calculated in the P–SMBP FY 2003 Rate-Setting PRS. The P–SMBP—WD revenue requirement increased approximately 14 percent due to increased purchased power costs due to extended poor water as well as costs associated with increased O&M expenses. The adjustment to the P–SMBP revenue requirement is a separate formal rate process which is documented in Rate Order No. WAPA–110. Rate Order No. WAPA–110 is also scheduled to go into effect on the first day of the first full billing period beginning on or after February 1, 2004. The revenue requirements for P–SMBP—WD are as follows:

SUMMARY OF P–SMBP—WD REVENUE REQUIREMENTS

	P–SMBP—WD revenue requirement
Proposed Increase—First Step (February 1, 2004):	
Present Revenue Requirement (15.80 mills/kWh × 1,988,000,000 kWh)	$31,410,400
Proposed First Step Increase (1.79 mills/kWh × 1,988,000,000 kWh)	3,558,520
Proposed Revenue Requirement—First Increment (17.59 mills/kWh × 1,988,000,000 kWh)	34,968,920
Proposed Increase—Second Step (October 1, 2004):	
Revenue Requirement—First Increment (17.59 mills/kWh × 1,988,000,000 kWh)	$34,968,920
Proposed Second Step Increase (.47 mills/kWh × 1,988,000,000 kWh)	934,360
Proposed Revenue Requirement—Second Increment (18.06 mills/kWh × 1,988,000,000 kWh)	35,903,280

The Fry-Ark piece of the revenue requirements for the LAP firm electric service rates was developed from the revenue requirement calculated in the Fry-Ark FY 2003 Rate-Setting PRS, which has been updated to reflect the most current information. The Fry-Ark revenue requirement contains two components. The project has an average annual energy generation of 52 gigawatthours from flow-through water. The remaining revenue requirement is derived from the firm capacity component. This is the procedure used in the study to account for the Fry-Ark portion of the energy marketed by LAP. The Fry-Ark Ratesetting PRS indicates that the existing annual revenue requirement of $12,855,560 meets all requirements for annual expenses and capital repayment. Therefore, no increase is necessary.

A table comparing the LAP existing revenue requirement to the proposed revenue requirements is shown below:

SUMMARY OF LAP REVENUE REQUIREMENTS

	Existing	First Step (February 2004)	Second Step (October 2004)
P–SMBP—WD	$31,410,400	$34,968,920	$35,903,280
Fry-Ark	12,855,560	12,855,560	12,855,560
Total LAP	44,265,960	47,824,480	48,758,840

Statement of Revenue and Related Expenses

The following table provides a summary of Fry-Ark revenues and expenses for the 5-year proposed rate approval period:

FRYINGPAN-ARKANSAS PROJECT COMPARISON OF 5-YEAR RATE APPROVAL PERIOD REVENUES AND EXPENSES ($1,000)

	Existing rate PRS (FY 2004–2008)	Provisional PRS (FY 2004–2008)	Difference
Total Revenues	68,208	69,065	857
Revenue Distribution:			
Operations and Maintenance	17,248	20,607	3,359
Purchased Power and Transmission	13,180	19,894	6,714
Interest	28,323	21,247	(7,076)
Investment Repayment	256	7,317	7,061
Capitalized Expenses	9,201	0	(9,201)
Total	68,208	69,065	857

The summary of P–SMBP—WD revenues and expenses for the 5-year proposed rate approval period is included in the P-SMBP Statement of Revenue and Related Expenses that is part of Rate Order No. WAPA–110.

Basis for Rate Development

The P–SMBP PRS calculates the composite rate in mills/kWh for future firm power (capacity and energy) sales. In the Fry-Ark PRS, the study calculates the capacity rate in dollars per kilowattyear. The rate is adjusted until sufficient revenues are generated to meet the cost-recovery requirement.

The proposed LAP firm power service rate is designed to recover 50 percent of the revenue requirement from the capacity rate and 50 percent from the energy rate. The capacity rate is calculated by dividing 50 percent of the total annual revenue requirement by the number of billing units (kWmo) in a year. The energy rate is calculated by dividing 50 percent of the total annual revenue requirement by the annual energy sales under contract.

The existing rates for LAP firm electric service in Rate Schedule L–F4 expire March 31, 2004. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period. The provisional rates are scheduled to go into effect on February 1, 2004, subject to final approval by the Commission, and will remain in effect through December 31, 2008.

Comments

During the public consultation and comment period, Western received four written comments pertaining to this rate adjustment. There were no comments during the August 6, 2003, public comment forum. All comments received by the end of the public consultation and comment period, September 11, 2003, were reviewed and considered in preparing this rate order. Written comments were received from: Loveland Area Customer Association, Kansas Electric Power Cooperative, Inc., Kansas Tri-State Generation and Transmission Association, Inc., Colorado Mni Sose Intertribal Water Rights Coalition, South Dakota.

The comments received dealt with controlling purchased power costs, the two-step rate proposal, and the tiered rate of the P–SMBP—ED. Comments that apply to P–SMBP only are being answered in the Rate Order No. WAPA–110. Comments and responses applicable to LAP, paraphrased for brevity, are discussed below.

Comment: Western received three comments in support of implementing the two-step rate adjustment.

Response: The two-step rate adjustment proposal meets all repayment requirements according to DOE Order RA 6120.2, and since the majority of the customers support the two-step rate adjustment, Western will implement the first step of the two-step rate adjustment on February 1, 2004, and the second step of the two-step rate adjustment on October 1, 2004.

Comment: One commenter suggested that Western decrease its purchased power costs by not purchasing power to meet Western's commitment to the tribal customers in drought years. Instead, the commenter suggests that Western pay the Tribes a lump sum in the amount of the benefit they would have received from their power allocation.

Response: Paying the Tribes in lieu of purchasing power to support delivery of Tribal allocations is outside the scope of this rate process. Western has the obligation under its existing LAP marketing plan and contracts to deliver firm power to customers.

Environmental Compliance

Following the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; Council on Environmental Quality Regulations, 40 CFR 1500–1508; and DOE NEPA Regulations, 10 CFR 1021, Western has determined that this action is categorically excluded from preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; so no clearance of this notice by the Office of Management and Budget is required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western determined that this action does not require a regulatory flexibility analysis since it is a rulemaking involving rates or services for public property.

Small Business Regulatory Enforcement Fairness Act

Western determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking relating to rates or services and involves matters of procedure.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the provisional rates, is available for public review in the Office of the Power Marketing Manager, Rocky Mountain Customer Service Regional Office, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, Colorado, and in the Power Marketing Liaison Office, Room 8G–027, 1000 Independence Avenue SW., Washington, DC.

Submission to the Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to the Commission for confirmation and approval on a final basis.

Order

In view of the foregoing and by the authority delegated to me by the Secretary, I confirm and approve on an interim basis, effective February 1, 2004, Rate Schedule L–F5 for LAP of Western. The rate schedule shall remain in effect on an interim basis, pending the Commission's confirmation and approval of them or substitute rates on a final basis through December 31, 2008.

Dated: December 24, 2003.

Kyle E. McSlarrow,
Deputy Secretary.

Loveland Area Projects, Colorado, Kansas, Nebraska, Wyoming; Schedule of Rates for Firm Electric Service

Effective:

First Step: Beginning on the first day of the first full billing period on or after February 1, 2004, through September 30, 2004.

Second Step: Beginning on the first day of the first full billing period on or after October 1, 2004, through December 31, 2008.

Available:

Within the marketing area served by the Loveland Area Projects.

Applicable:

To the wholesale power customers for firm power service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character:

Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rates:

First Step:

Demand Charge: $3.08 per kilowatt (kW) of billing demand.

Energy Charge: 11.72 mills per kilowatthour (kWh) of use.

Billing Demand: Unless otherwise specified by contract, the billing demand will be the seasonal contract rate of delivery.

Second Step:

Demand Charge: $3.14 per kilowatt (kW) of billing demand.

Energy Charge: 11.95 mills per kilowatthour (kWh) of use.

Billing Demand: Unless otherwise specified by contract, the billing demand will be the seasonal contract rate of delivery.

Adjustments:

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: None. The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

[FR Doc. 04–204 Filed 1–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Rate Order No. WAPA–110

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–110 and Rate Schedules P–SED–F7 and P–SED–FP7 placing into effect provisional rates for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) firm power service and firm peaking power service of Western Area Power Administration (Western). The provisional rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period.

DATES: The provisional rates will be placed into effect on an interim basis on February 1, 2004, and will be in effect until the Commission confirms, approves, and places the provisional rates in effect on a final basis for 5 years ending December 31, 2008, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Power Marketing Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7394, e-mail *Riehl@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved the existing Rate Schedules P–SED–F6 and P–SED–FP6 for P–SMBP—ED firm power service and firm peaking power service on January 6, 1994 (Rate Order No. WAPA–60, 59 FR 3348, January 21, 1994); and the Commission confirmed and approved the rate schedules on July 14, 1994, under FERC Docket No. EF94–5031–000 (68 FERC 62,040). The rates set forth in Rate Order No. WAPA–60 were approved for 5 years beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, Rate Order No. WAPA–83 (63 FR 58034, October 29, 1988), extended the existing rates for 2 years beginning February 1, 1999, and ending January 31, 2001. On July 17, 2000, Rate Order No. WAPA–90 (65 FR 44045, July 10, 2000), further extended the existing rates for 2 years and 9 months beginning February 1, 2001, and ending September 30, 2003. On May 14, 2003, Rate Order No. WAPA–102 (68 FR 33120, June 3, 2003), further extended the existing rates through March 31, 2004.

Major factors contributing to this rate adjustment are the economic impact of the drought, increased interest expense associated with deficits, increased operation and maintenance and other annual expenses due to normal inflationary pressure since the last rate adjustment, and an additional 11 years of investment since the last rate adjustment.

Under Rate Schedule P–SED–F6, the composite rate is 14.23 mills per kilowatthour (mills/kWh), the energy rate is 8.32 mills/kWh, the tiered energy rate for energy in excess of 60 percent load factor is 3.38 mills/kWh, and the firm capacity rate is $3.20 per kilowattmonth (kWmo). Under Rate Schedule P–SED–FP6, the firm peaking capacity rate is $3.20 per kWmo, and the firm peaking energy rate is 8.32 mills/kWh. The provisional rates are being implemented in two steps. The first step of the provisional rates for P–SMBP—ED firm power service in Rate Schedule P–SED–F7 will result in an Eastern Division composite rate of 16.04 mills/kWh. The energy rate will be 9.34 mills/kWh, the capacity rate will be $3.62 per kWmo and the tiered energy rate for energy in excess of 60 percent load factor will be 5.21 mills/kWh. The Eastern Division composite rate will increase approximately 12.7 percent effective on February 1, 2004. The second step of the provisional rates for P–SMBP—ED firm power service will result in an Eastern Division composite rate of 16.51 mills/kWh. The energy rate will be 9.62 mills/kWh, the capacity rate will be $3.72 per kWmo, and the tiered energy rate for energy in excess of 60 percent load factor will be 5.21 mills/kWh. This will result in an additional increase of 2.9 percent effective on October 1, 2004.

The first step of Rate Schedule P–SED–FP7 will result in a firm peaking capacity rate of $3.62 per kWmo and a firm peaking energy rate of 9.34 mills/kWh and will become effective February 1, 2004. The second step of the firm peaking capacity rate will be $3.72 per kWmo and a firm peaking energy rate will be 9.62 mills/kWh and will become effective October 1, 2004.

Provisional Rates for P–SMBP—ED Firm Power Service and Firm Peaking Power Service

The provisional rates for P–SMBP—ED firm power service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchased power, operation and maintenance expense, and other annual expenses. The annual revenue requirement for firm power service is allocated equally between capacity and energy.

The provisional rates for P–SMBP—ED firm power service are developed under the DOE Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau

of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

Under Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary delegated (1) the authority to develop power and transmission rates on a nonexclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR 903, effective on September 18, 1985 (50 FR 37835).

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR 903, have been followed by Western in developing these provisional rates.

Rate Order No. WAPA–110, confirming, approving, and placing the provisional P–SMBP—ED firm power service and firm peaking power rates into effect on an interim basis, is issued. New Rate Schedules P–SED–F7 and P–SED–FP7 will be submitted promptly to the Commission for confirmation and approval on a final basis.

Dated: December 24, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

Department of Energy, Deputy Secretary

In the matter of: Western Area Power Administration Rate Adjustment for the Pick-Sloan Missouri Basin Program—Eastern Division; Order Confirming, Approving, and Placing the Pick-Sloan Missouri Basin Program—Eastern Division Firm Power and Firm Peaking Power Service Rates Into Effect on an Interim Basis

[Rate Order No. WAPA–110]

These rates are developed under the DOE Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts specifically applicable to the project involved, were transferred to and vested in the Secretary.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary delegated (1) the authority to develop power and transmission rates on a nonexclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903. Procedures for approving Power Marketing Administration rates by the Commission are found at 18 CFR part 300.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kW.

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in dollars per kWmo and applied to each kW delivered to each customer per month.

Commission: Federal Energy Regulatory Commission.

Composite Rate: The rate for firm power. It is the total annual revenue requirement for capacity and energy divided by the expected annual firm energy sales. It is expressed in mills/kWh and used for comparison purposes.

Corps: United States Army Corps of Engineers.

CROD: Contract Rate of Delivery. The maximum amount of capacity made available to a preference customer for a period specified under a contract.

Customer: An entity with a contract for and receiving firm electric service from Western's Upper Great Plains Region.

DOE: United States Department of Energy.

DOE Order RA 6120.2: An order outlining power marketing administration financial reporting and rate-making procedures.

Energy: That which does or is capable of doing work. It is measured in terms of the work it is capable of doing over a period of time. It is expressed in kWh.

Energy Rate: The rate which sets forth the charges for energy. It is expressed in mills/kWh and applied to each kWh delivered to each customer.

Firm: A type of product and/or service that is available at the time requested by the customer.

FRN: **Federal Register** notice.

Fry-Ark: Fryingpan-Arkansas Project.

FY: Fiscal year; October 1 to September 30.

Interior: United States Department of the Interior.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWmo: Kilowattmonth—the electrical unit of the monthly amount of capacity.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

Load Factor: The ratio of average load in kW supplied during a designated period to the peak or maximum load in kW occurring in that period.

LAP: Loveland Area Projects.

Mills/kWh: Mills per kilowatthour—the unit of charge for energy (equals one tenth of a cent or one thousandth of a dollar).

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

O&M: Operation and maintenance.

P–SMBP: The Pick-Sloan Missouri Basin Program.

P–SMBP—ED: Pick-Sloan Missouri Basin Program—Eastern Division.

P–SMBP—WD: Pick-Sloan Missouri Basin Program—Western Division

Power: Capacity and energy.

Power Factor: The ratio of real to apparent power at any given point and time in an electrical circuit. Generally it is expressed as a percentage ratio.

Preference: The requirements of Reclamation Law which provide that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Project Use: Power as defined by Reclamation law which is used to operate P–SMBP—ED facilities.

Provisional Rates: Rates schedules which have been confirmed, approved, and placed in effect on an interim basis by the Deputy Secretary of DOE.

PRS: Power repayment study.

Rate Brochure: A document prepared for public distribution explaining the rationale and background of the rate proposal contained in this rate order dated June 2003.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws which govern the marketing and rate-setting of power by Western.

Revenue Requirement: The revenue required to recover O&M expenses, purchase power and transmission service expenses, interest, deferred expenses, and repayment of Federal investments, and other assigned costs.

Secretary: Secretary of Energy.

Tiered Rate: Pick-Sloan Missouri Basin Program—Eastern Division rate applied to energy in excess of 60 percent load factor.

Upper Great Plains Region: The Upper Great Plains Customer Service Region of Western.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

The provisional rates will become effective on an interim basis on the first day of the first full billing period beginning on or after February 1, 2004, and will be in effect pending the Commission's approval of them or substitute rates on a final basis for 5 years ending December 31, 2008, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR 903, have been followed by Western in developing these rates. The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. The proposed rate adjustment was initiated on March 21, 2003, when a letter announcing informal meetings to discuss the proposed firm power service and firm peaking power service rate adjustment was sent to the P–SMBP—ED preference customers and other interested parties. Informal meetings were held on April 14 through April 16, 2003, in Denver, CO, Lincoln, NE, Sioux Falls, SD, and Fargo, ND. At these informal meetings, Western explained the rationale for the rate adjustment, presented rate designs and methodologies and answered questions.

2. On June 6, 2003, letters were mailed from Western's Upper Great Plains Regional Office to all P–SMBP—ED preference customers and interested parties announcing the upcoming publication of a **Federal Register** notice including the P–SMBP—ED rate proposal, and announcing the times and locations of four public information forums and two public comment forums.

3. A **Federal Register** notice was published on June 13, 2003 (68 FR 35402), officially announcing the proposed rates for the P–SMBP—ED, initiating the public consultation and comment period and announcing the public information and public comment forums.

4. On June 16, 2003, letters were mailed from Western's Upper Great Plains Regional Office to all P–SMBP—ED preference customers and interested parties transmitting a copy of the **Federal Register** notice published June 13, 2003 (68 FR 35402), initiating the public rate process.

5. On July 14, 2003, beginning at 1 p.m. MDT, the first public information forum was held at the Radisson Stapleton Plaza in Denver, CO. On July 15, 2003, beginning at 9 a.m. CDT, the second public information forum was held at the Southeast Community College in Lincoln, NE. On July 16, 2003, beginning at 9 a.m. CDT, the third public information forum was held at the Ramkota Hotel and Conference Center in Sioux Falls, SD. On July 17, 2003, beginning at 9 a.m. CDT, the fourth public information forum was held at the Doublewood Inn in Fargo, ND. At these public information forums, Western provided detailed explanations of the proposed rates for P–SMBP—ED, provided a list of issues that could change the proposed rates and answered questions. A rate brochure detailing the proposed rates was provided at these forums.

6. On August 6, 2003, beginning at 1 p.m. MDT, a public comment forum was held at the Radisson Stapleton Plaza in Denver, CO. Western gave the public an opportunity to comment for the record. No oral or written comments were received at this forum. On August 7, 2003, beginning at 9 a.m. CDT, a public comment forum was held at the Ramkota Hotel and Convention Center in Sioux Falls, SD. Western gave the public an opportunity to comment for the record. Two oral comments were received at this forum.

7. Thirty-one comment letters were received during the consultation and comment period that ended September 11, 2003. All formally submitted comments have been considered in preparing this rate order.

8. Western's Upper Great Plains Region provided a Web site with all of the letters, time frames, dates and locations of forums, documents discussed at the information meetings, **Federal Register** notices and all other information about this rate process for easy customer access. The Web site is located at *http://www.wapa.gov/ugp/rates/2004RateAdj/Default.htm.*

Project Description

The P–SMBP was authorized by Congress in Section 9 of the Flood Control Act of December 22, 1944, commonly referred to as the 1944 Flood Control Act. The multipurpose program provides flood control, irrigation, navigation, recreation, preservation and enhancement of fish and wildlife and power generation. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

In addition to the multipurpose water projects authorized by Section 9 of the Flood Control Act of 1944, certain other existing projects have been integrated with the P–SMBP for power marketing, operation, and repayment purposes. The Colorado-Big Thompson, Kendrick, and Shoshone projects were combined with the P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are referred to as the ''Integrated Projects'' of the P–SMBP.

The Flood Control Act of 1944 also authorized the inclusion of the Fort Peck Project with the P–SMBP for operation and repayment purposes. The Riverton Project was integrated with the P–SMBP in 1954, and in 1970 was reauthorized as a unit of P–SMBP.

The P–SMBP is administered by two regions. The Upper Great Plains Region with a regional office in Billings, MT, markets power from the Eastern Division of P–SMBP and the Rocky Mountain Region with a regional office in Loveland, CO, markets the Western Division power of P–SMBP. The Upper Great Plains Region markets power in western Iowa, Minnesota, Montana east of the Continental Divide, North Dakota, South Dakota, and the eastern two-thirds of Nebraska. The Rocky Mountain Region markets P–SMBP power (and Fry-Ark power, which in combination with P–SMBP—WD is known as LAP power) in northeastern Colorado, east of the Continental Divide in Wyoming, west of the 101st meridian in Nebraska and northern Kansas. P–SMBP power is marketed to approximately 300 firm power customers by the Upper Great Plains Region and approximately 40 firm power customers by the Rocky Mountain Region.

Power Repayment Study

PRSs are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the P–SMBP power function. Repayment criteria are based on law, policies, DOE Order RA 6120.2 and authorizing legislation.

Existing and Provisional Rates

The provisional rates for P–SMBP—ED firm power service and firm peaking power service are designed to recover an annual revenue requirement that includes the investment repayment, interest, purchase power and O&M expenses. The provisional rates will be implemented in two steps. First step rates are to become effective on an interim basis on the first day of the first full billing period beginning on or after February 1, 2004. Second step rates are to become effective on the first day of the first full billing period beginning on or after October 1, 2004. Under Rate Schedule P–SED–F7, the first and second step provisional rates for P–SMBP—ED firm power service will result in an overall composite rate increase of approximately 15.6 percent. A comparison of the existing and provisional rates for P–SMBP—ED firm power service and firm peaking power service follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES P–SMBP—ED FIRM POWER SERVICE AND FIRM PEAKING POWER SERVICE

Firm power service	Existing rates	First step provisional rates and percent of change, effective Feb. 1, 2004	Second step provisional rates and percent of change, effective Oct. 1, 2004
Revenue Requirement	$135.2 million	$155.5 million (15.0%)	$160.1 million (3.0%).
Composite Rate	14.23 mills/kWh	16.04 mills/kWh (12.7%).	16.51 mills/kWh (2.9%).
Firm Capacity	$3.20/kWmo	$3.62/kWmo (13.1%)	$3.72/kWmo (2.8%).
Firm Energy	8.32 mills/kWh	9.34 mills/kWh (12.2%)	9.62 mills/kWh (3.0%).
Tiered > 60 Percent Load Factor	3.38 mills/kWh	5.21 mills/kWh (54.1%)	5.21 mills/kWh (0.0%).
Firm Peaking Capacity	$3.20/kWmo	$3.62/kWmo (13.1%)	$3.72/kWmo (2.8%).
Firm Peaking Energy [1]	8.32 mills/kWh	9.34 mills/kWh (12.2%)	9.62 mills/kWh (3.0%).

[1] Firm Peaking Energy is normally returned. This rate will be assessed in the event Firm Peaking Energy is not returned.

Western Division

The LAP rate will be designed to cover the P–SMBP—WD revenue requirement for the P–SMBP and the revenue requirement for Fry-Ark. The adjustment to the LAP rate is a separate formal rate process which is documented in Rate Order No. WAPA–105. Rate Order No. WAPA–105 is also scheduled to go into effect on the first day of the first full billing period beginning on or after February 1, 2004.

Certification of Rate

Western's Administrator has certified that the P–SMBP—ED firm power service and firm peaking power service rates placed into effect on an interim basis herein are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

Discussion

According to Reclamation Law, Western must establish power rates sufficient to recover operation, maintenance, and purchased power expenses, and repay the Federal Government's investment in generation and transmission facilities, as well as certain nonpower costs in excess of the irrigation users' ability to repay. Rates must also be set to cover interest expenses on the unpaid balance of facilities' investments, replacements and additions.

The current rates, $3.20 per kWmo and 8.32 mills/kWh, were placed in effect in the October 1994 billing period and approved by the Commission on a final basis on July 14, 1994, FERC Docket No. EF94–5031–000 (68 FERC ❙ 62,040). These rates were originally set to expire on January 31, 1999, but have been extended several times. The rates are currently set to expire on March 31, 2004, or until superseded.

Major factors contributing to this rate adjustment are the economic impact of the drought, increased interest expense associated with deficits, increased operation and maintenance and other annual expenses due to normal inflationary pressure since the last rate adjustment, and an additional 11 years of investment since the last rate adjustment.

The P–SMBP—ED firm power service rates were developed from the revenue requirement calculated in the FY 2003 Ratesetting PRS for the P-SMBP. The first step provisional rates are $3.62 per kWmo for firm capacity, 9.34 mills/kWh for energy and the tiered energy rate for energy in excess of 60 percent load factor will be 5.21 mills/kWh, and are to be implemented in the first full billing period beginning on or after February 1, 2004. The second step provisional rates are $3.72 per kWmo for firm capacity, 9.62 mills/kWh for energy, and the tiered energy rate for energy in excess of 60 percent load factor will be 5.21 mills/kWh, and are to be implemented in the first full billing period beginning on or after October 1, 2004.

The first step of Rate Schedule P–SED–FP7 will result in a firm peaking capacity rate of $3.62 per kWmo and a firm peaking energy rate of 9.34 mills/kWh and will become effective February 1, 2004. The second step of the firm peaking capacity rate will be $3.72 per kWmo and a firm peaking energy rate will be 9.62 mills/kWh and will become effective October 1, 2004.

Statement of Revenue and Related Expenses

The following table provides a summary of revenues and expenses for the 5-year provisional rate period.

PICK–SLOAN MISSOURI BASIN PROGRAM COMPARISON OF 5–YEAR RATE APPROVAL PERIOD REVENUES AND EXPENSES ($1,000)

	Existing rate PRS (FY 2004–2008)	Provisional rate PRS (FY 2004–2008)	Difference
Total Revenues	$1,217,478	$1,470,866	$253,388
Revenue Distribution:			

PICK–SLOAN MISSOURI BASIN PROGRAM COMPARISON OF 5–YEAR RATE APPROVAL PERIOD REVENUES AND EXPENSES ($1,000)—Continued

	Existing rate PRS (FY 2004–2008)	Provisional rate PRS (FY 2004–2008)	Difference
O&M	610,380	756,944	146,564
Purchase Power	0	161,653	161,653
Transmission	0 [1]	67,012	67,012
Interest	373,360	420,099	46,739
Integrated Projects	0	0	0
Investment Repayment	233,738	6,450	(227,288)
Capitalized Expenses	0	58,708	58,708
Total	1,217,478	$1,470,866	253,388

[1] In the existing rate PRS, transmission expense was included in O&M expense.

A table comparing the P-SMBP existing revenue requirement to the proposed revenue requirements is shown below:

P–SMBP FIRM AND FIRM PEAKING REVENUE REQUIREMENT

($1,000,000)

	Existing	First step February 2004	Second step October 2004
P–SMBP—ED Firm Power	$120.8	$139.9	$144.0
P–SMBP—ED Firm Peaking Power	14.4	15.6	16.1
Total P–SMBP—ED Revenue Requirement	135.2	155.5	160.1
P–SMBP—WD Firm Power	31.4	35.0	35.9
Total P–SMBP Revenue Requirement	166.6	190.5	196.0

Basis for Rate Development

The 2002 repayment analysis for the P–SMBP indicated a need to adjust the existing firm power service and firm peaking power service rates. To meet those requirements, the P–SMBP—ED proposed adjustments to the firm power service and firm peaking power service rates.

The proposed P–SMBP—ED firm power service rate is designed to recover 50 percent of the revenue requirement from the capacity rate and 50 percent from the energy rate. The capacity rate of $3.62 per kWmo is calculated by dividing 50 percent of the total annual revenue requirement by the number of billing units (kWmos) in a year. The energy rate of 9.34 mills/kWh is calculated by dividing 50 percent of the total annual revenue requirement by the annual energy sales. The capacity rate is applied to both firm power and firm peaking power. The energy rate is applied to firm energy and firm peaking energy that is not returned to Western.

The P–SMBP—ED firm peaking rate is equal to the capacity charge for the firm power rate. The customer pays the capacity rate on its total firm peaking CROD each month rather than firm peaking delivered each month. Contract terms vary among firm peaking customers with respect to the return of peaking energy. One customer returns all peaking energy, while other peaking customers may pay for 20 to 40 percent of the peaking energy they use and return the rest to Western. When a peaking customer keeps peaking energy, it pays for it at the firm peaking energy rate.

The proposed rate adjustment is scheduled to become effective on an interim basis on the first day of the February 2004 billing period. The two-step rate adjustment for P–SMBP—ED firm power service will result in an Eastern Division composite rate increase of approximately 12.7 percent effective February 1, 2004, and another 2.9 percent effective October 1, 2004, for a total increase of approximately 15.6 percent. The rate schedule approval period terminates December 31, 2008.

Comments

During the public consultation and comment period, Western received 31 letters containing comments pertaining to this rate adjustment. In addition, we received verbal comments during the August 7, 2003, public comment forum. All comments received by the end of the public consultation and comment period, September 11, 2003, were reviewed and considered in preparing this rate order. Written comments were received from: Capital Electric Cooperative, North Dakota, City of Akron, Iowa, City of Beatrice, Nebraska, City of McLaughlin, South Dakota, Central Electric Cooperative, South Dakota, Clay-Union Electric Corporation, South Dakota, Corn Belt Power Cooperative, Iowa, Dakota Valley Electric Cooperative, North Dakota, East Grand Forks Water & Light Department, Minnesota, East River Electric Power Cooperative, South Dakota, Harrison County Rural Electric Cooperative, Iowa, Intertribal Council On Utility Policy, South Dakota, KEM Electric Cooperative, North Dakota, L & O Power Cooperative, Iowa, Lincoln Electric System, Nebraska, Lower Yellowstone REA, Montana, Marshall Municipal Utilities, Minnesota, McLean Electric Cooperative, North Dakota, McLeod Cooperative Power, Minnesota, Mid-West Electric Consumers Association, Colorado, Minnkota Power Cooperative, North Dakota, Mni Sose Intertribal Water Rights Coalition, South Dakota, Moorhead Public Service, Minnesota, Moreau-Grand Electric Cooperative, South Dakota, Northwest Iowa Power Cooperative, Iowa, Slope Electric Cooperative, North Dakota, State of South Dakota, South Dakota, Tri-State Generation and Transmission Association, Colorado, Union County Electric Cooperative, South Dakota Upper Missouri G & T Electric

Cooperative, Montana, Verendrye electric Cooperative, North Dakota.

The following is a summary of the comments received by the end of the consultation and comment period and Western's responses to those comments. Comments and responses, paraphrased for brevity, are presented below. Specific comments are used for clarification where necessary.

Comment: During the comment period, Western received 29 comments (28 written and 1 verbal) in favor of a two-step rate adjustment and one comment in favor of a one-step rate adjustment. Western also received 6 written comments after the comment period closed in favor of the two-step rate adjustment.

Response: The two-step option causes the projected cumulative deficit to be approximately $5 million higher than under the one-step option, but the deficit and its associated interest expense are projected to be fully repaid in 2011 under either option. Since the two-step option meets all repayment requirements according to DOE Order RA 6120.2 and an overwhelming majority of the comments were in favor of it, Western will adopt the two-step rate adjustment.

Comment: Three customers commented that the increase is quite large and would like to see the increase as small as possible to mitigate the impacts on customers. One customer commented that Western should spread the rate increase over 3 years.

Response: In accordance with DOE Order RA 6120.2, Western has set the rate such that it is the lowest possible consistent with sound business principles. By adopting the two-step rate adjustment, Western has spread the impact of the rate increase on the customers over a longer period of time than with the one-step adjustment. Spreading the rate increase over 3 years would cause the cumulative deficit to increase even more. Western does not believe it would be consistent with sound business principles to do this.

Comment: One commenter suggested that Western should decrease its purchase power costs by offering to pay the Native American Tribal customers a lump sum payment in the amount of the benefit they would have received from their power allocation rather than making purchases to support Tribal allocations.

Response: Paying the Tribes in lieu of purchasing power to support delivery of Tribal allocations is outside the scope of this rate process. Western has the obligation under its existing P-SMBP—ED marketing plan and contracts to deliver firm power to customers.

Comment: The Intertribal Council on Utility Policy (Intertribal COUP) submitted comments related to wind and other renewable energy resources. One of the Intertribal COUP comments was that Western should purchase wind and solar power when supplementary purchases are necessary. In addition, rather than spending millions of dollars on supplemental purchases, Western should use this money to invest in wind power, which would provide 25 to 30 years of clean, wholesale power at a low fixed cost.

Response: Western does not presently have the statutory authority to invest in wind power. When Western must purchase supplemental energy to meet its contractual obligations, it purchases at the best market price available at the time to mitigate the impact on the firm power rate. This practice reflects the statutory requirement that Western set rates at the lowest possible level to consumers consistent with sound business principles. If wind or other renewable energy resources are available in the market at the time these purchases are made, and are competitively priced, they would be included in these wholesale energy market purchases. In order to promote renewable resources, Western is willing to firm a customer's allocation with wind or solar energy at the request of the customer, if the customer agrees to bear any associated expenses.

Comment: Two customers commented that they disagree with the shifting of off-system transmission costs for project use customers to firm power customers. The commenter suggested that project use customers should be subject to the same policy as firm power customers with off-system transmission costs (Western pays 1 mill/kWh of the transmission costs). Western received five letters after the close of the comment period with similar comments.

Response: These comments refer to a Reclamation policy that is outside the scope of this rate process.

Comment: One customer commented that the proposed increase in the capacity and energy charges of approximately 15 percent exceeds the normal rate increases being implemented by other electrical energy providers.

Response: P–SMBP rates have not been adjusted since October 1994. Although the second step of the firm composite rate increase is approximately 16 percent over the current firm composite rate, this translates into an annual increase of approximately 1.5 percent, which is well below the rate of inflation for the same time period. Western sets rates to comply with statutes and regulations. Given the current revenue requirement, we need to raise the rates to a level that is approximately 16 percent higher than the current rates to comply with these statutes and regulations.

Comment: Western received seven written comments during the comment period and 6 written comments after the comment period closed concerning the proposed tiered rate adjustment. Five comments received during the comment period and all of the late comments stated that the tiered rate adjustment was too high and should be reexamined. These comments also stated that Western should also consider ''pooling'' the cost of purchases for greater than 60 percent load factor energy rather than charging a separate rate for these costs. One comment received during the comment period stated that the purchase price of 14.4 mills/kWh used in the tiered rate calculation was too low and should be reexamined. The commenter was also concerned that a P–SMBP—ED tiered rate that does not fully recover its costs would cause the LAP rate to increase. Another comment was that the tiered rate should cover the greater than 60 percent load factor energy, but it appeared that decreased generation was one of the main causes of the tiered rate increase, which implies that customers with 60 percent load factor energy should not be singled out to pay the costs due to decreased generation. This commenter stated that Western should monitor costs related to greater than 60 percent load factor energy more closely.

Response: Western reexamined the tiered rate for energy in excess of 60 percent load factor and has determined that the rate should be 5.21 mills/kWh. This rate is calculated using average Corps generation from 1898 through 2002 excluding 1934 through 1942, the years when hydrogeneration was most affected by the 1930s drought. These years were excluded from the current tiered rate calculation because they were considered extreme years that would artificially decrease the generation average. Excluding these years from the average in the provisional tiered rate will be consistent with the previous tiered rate design.

The 5.21 mills/kWh tiered rate also reflects a change in the load figure used in the calculation. The average load figures in the tiered rate calculation should be changed from a long-term average to the average firm load from FY 2000 through 2003. The FY 2000 through 2003 average reflects the current amount of fixed energy

requirements as well as the increased energy under the Post-2000 allocations.

Finally, the 5.21 mills/kWh tiered rate reflects a purchase power price of 19.43 mills/kWh. This is the average off-peak price of Western's power purchases (in the Upper Great Plains Region) from November 2002 through March 2003. This average reflects the most recent winter purchase prices. The Upper Great Plains Region's average off-peak purchase power prices have not been at or below 14.4 mills/kWh for at least 10 years, so it is reasonable to increase the purchase price in the tiered rate calculation. The provisional tiered rate calculation is shown here:

295 GWH @ 19.43 mills/kWh off-peak purchase price = $5,731,850 tiered rate revenue requirement.

PROVISIONAL TIERED RATE CALCULATION (5.21 MILLS/KWH)

Month	Corps generation (GWH)	Plus reclamation generation (GWH)	Less plant use (GWH)	Total generation less plant use (GWH)	Divided by 1.07 losses (GWH)	Average load (GWH)	Purchases (GWH)
November	912	80	4	988	923	729	0
December	765	81	5	841	786	832	46
January	769	80	6	843	788	838	50
February	664	74	5	733	685	805	120
March	632	82	5	709	663	742	79
Total	3,742	397	25	4,114	3,845	3,946	295

$5,731,850 tiered rate revenue requirement / 1,101 GWH per year tiered energy = 5.21 mills/kWh tiered rate.

Environmental Compliance

Under the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; Council on Environmental Quality Regulations, 40 CFR 1500–1508; and DOE NEPA Regulations, 10 CFR 1021, Western determined that this action is categorically excluded from preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; so no clearance of this notice by the Office of Management and Budget is required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western determined that this action does not require a regulatory flexibility analysis since it is a rulemaking involving rates or services for public property.

Small Business Regulatory Enforcement Fairness Act

Western determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking relating to rates or services and involves matters of procedure.

Availability of Information

Information about this rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material made or kept by Western in developing the provisional rates, is available for public review in the Office of the Power Marketing Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT, and in the Power Marketing Liaison Office, Room 8G–027, 1000 Independence Avenue SW., Washington, DC.

Submission to the Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to the Commission for confirmation and approval on a final basis.

Order

In view of the foregoing and by the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective February 1, 2004, Rate Schedules P–SED–F7 and P–SED–FP7, for the Pick-Sloan Missouri Basin Program—Eastern Division of the Western Area Power Administration. The rate schedules shall remain in effect on an interim basis, pending the Commission confirmation and approval of them or substitute rates on a final basis through December 31, 2008.

Dated: December 24, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

United States Department of Energy, Western Area Power Administration; Pick-Sloan Missouri Basin Program—Eastern Division, Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska; Schedule of Rates for Firm Power Service

[Rate Schedule P–SED–F7 (Supersedes Schedule P–SED–F6)]

Effective

First Step

The first day of the first full billing period beginning on or after February 1, 2004, through September 30, 2004.

Second Step

Beginning on the first day of the first full billing period beginning on or after October 1, 2004, through December 31, 2008.

Available

Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable

To the power and energy delivered to customers as firm power service.

Character

Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

First Step:

Demand Charge

$3.62 for each kilowatt per month (kWmo) of billing demand.

Energy Charge

9.34 mills for each kilowatthour (kWh) for all energy delivered as firm power service. An additional charge of 5.21 mills per kWh (mills/kWh), for a total of 14.55 mills/kWh, will be assessed for all energy delivered as firm power service that is in excess of 60-percent monthly load factor and within the delivery obligations under the provisions of the power sales contract.

Billing Demand

The billing demand will be as defined by the power sales contract.

Second Step:

Demand Charge

$3.72 for each kW-month of billing demand.

Energy Charge

9.62 mills for each kWh for all energy delivered as firm power service. An additional charge of 5.21 mills/kWh for a total of 14.83 mills/kWh will be assessed for all energy delivered as firm power service that is in excess of 60-percent monthly load factor and within the delivery obligations under the provisions of the power sales contracts.

Billing Demand

The billing demand will be as defined by the power sales contract.

Adjustments

For Character and Conditions of Service

Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5-percent discount on capacity and energy charges when facilities are provided by the customer that result in a sufficient savings to Western to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in Western.

For Billing of Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the above rate.

For Power Factor

None. The customer will be required to maintain a power factor at the point of delivery between 95-percent lagging and 95-percent leading.

Schedule of Rates for Firm Peaking Power Service

[Rate Schedule P–SED–FP7 (Supersedes Schedule P–SED–FP6)]

Effective

First Step

The first day of the first full billing period beginning on or after February 1, 2004, through September 30, 2004.

Second Step

Beginning on the first day of the first full billing period beginning on or after October 1, 2004, through December 31, 2008.

Available

Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program, to our customers with generating resources enabling them to use firm peaking power service.

Applicable

To the power sold to customers as firm peaking power service.

Character

Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

First Step:

Demand Charge:

$3.62 for each kilowatt per month (kWmo) of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge:

9.34 mills for each kilowatthour (kWh) for all energy scheduled for delivery without return.

Billing Demand:

The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Second Step:

Demand Charge:

$3.72 for each kW-month of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge:

9.62 mills for each kWh for all energy scheduled for delivery without return.

Billing Demand:

The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustments

Billing for Unauthorized Overruns:

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at 10 times the above rate.

[FR Doc. 04–203 Filed 1–5–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7607–3]

EPA National Advisory Council for Environmental Policy and Technology—Compliance Assistance Advisory Committee; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Compliance Assistance Advisory Committee (CAAC) under the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Thursday, February 12, 2004, from 11:30 a.m. to 1:30 p.m. eastern time. The meeting will be hosted out of Conference Room #6148, U.S. EPA, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individuals listed below.

Background: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and

recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing. The CAAC, a subcommittee of NACEPT, provides a Federal advisory forum from which the Agency can receive valuable multi-stakeholder advice and recommendations on enhancing EPA's compliance assistance program.

Purpose of Meeting: The CAAC will review and comment on the work done to date on: (1) Strengthening the national compliance assistance network; (2) developing and testing performance measurement systems to demonstrate the effectiveness of compliance assistance; and (3) integration of compliance assistance into policies and practices of EPA and compliance assistance providers.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the day of the meeting or to obtain the teleconference phone number must contact Ms. Joanne Berman, Designated Federal Officer for the CAAC, U.S. Environmental Protection Agency (2224A), Office of Enforcement and Compliance Assurance, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–7064, fax at (202) 564–7083; or via e-mail at *berman.joanne@epa.gov.* Written comments from the public are welcome any time before or at the time of the meeting. The agenda and materials for the meeting will be available to the public upon request. Written comments from the public are welcome any time before, during or after the meeting.

General Information: Additional information concerning the NACEPT can be found on our Web site (*http://www.epa.gov/ocem*).

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Berman at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 23, 2003.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 04–212 Filed 1–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7607–4]

Science Advisory Board (SAB) Staff Office Notification of Multiple Upcoming Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency Science Advisory Board (SAB) Staff Office announces upcoming multiple teleconferences of:

(1) SAB Committee on Valuing the Protection of Ecological Systems and Services: Public teleconferences to plan its future work, including a workshop and advisory meeting.

(2) SAB Multimedia, Multipathway, and Multireceptor Risk Assessment (SAB 3MRA) Modeling System Panel: Public teleconferences to review drafts and finalize its report.

(3) Clean Air Scientific Advisory Committee's (CASAC) Particulate Matter (PM) Review Panel: Public teleconference to discuss follow-on matters related to its review of the EPA Air Quality Criteria Document for Particulate Matter (Fourth External Review Draft).

DATES: The SAB Committee on Valuing the Protection of Ecological Systems and Services will hold public teleconferences on January 20, 21, and 22, 2004 from 12:30 p.m. to 2:30 p.m. (Eastern Time).

The SAB 3MRA Panel will hold public teleconferences on January 16, February 6, and February 27, 2004, from 1 p.m. to 5 p.m. (Eastern Time).

The CASAC PM Review Panel public teleconference will take place on February 3, 2004 from 11 a.m. to 2 p.m. (Eastern Time).

ADDRESSES: Participation in the meetings indicated above will be by teleconference only. Supplemental materials and an agenda for each meeting will be announced on the SAB Web site, *http://www.epa.gov/sab* prior to the teleconference.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call in number and access code to participate in any of the teleconferences, or who wish to submit written or brief oral comments (three minutes or less) must contact the appropriate Designated Federal Officer (DFO) listed below:

(1) For information regarding the SAB Committee on Valuing the Protection of Ecological Systems and Services please contact Dr. Angela Nugent. Dr. Nugent can be contacted via telephone/voice mail: (202) 564–4562, fax: (202) 501–0582, or e-mail: *nugent.angela@epa.gov.*

(2) For information regarding the SAB 3MRA Panel contact Ms. Kathleen White. Ms. White can be contacted via telephone/voice mail: (202) 564–4559, fax: (202) 501–0582, or e-mail: *white.kathleen@epa.gov.*

(3) For information regarding the CASAC PM Review Panel contact Mr. Fred Butterfield. Mr. Butterfield can be contacted via telephone/voice mail: (202) 564–4562, fax: (202) 501–0582, or e-mail: *butterfield.fred@epa.gov.*

To reach a central number at the SAB Staff Office, please call via telephone (202) 564–4533, U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. General information about the SAB and CASAC can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background and Summary

The SAB Committee on Valuing the Protection of Ecological Systems and Services is holding three public teleconferences to plan its future work, including a workshop and public advisory meeting tentatively planned for April 13–15, 2004. Background on the Committee and its charge was provided in a **Federal Register** notice published on March 7, 2003 (68 FR 11082). The overall charge to the Committee is to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services, and then to identify key areas for improving knowledge, methodologies, practice, and research.

The SAB 3MRA Panel will hold three public teleconferences for the SAB 3MRA Panel to further edit and discuss approval of the SAB 3MRA Panel's final report. The SAB 3MRA Panel will complete discussion of its second draft report during the January 16, 2004 teleconference. The SAB 3MRA Panel will discuss its third draft report during the February 6, 2004 teleconference. The purpose of the February 27, 2004 teleconference is to finalize the SAB 3MRA Panel's report for the SAB's consideration and for transmittal to the Administrator.

Background on the SAB 3MRA Panel, and this review was provided in **Federal Register** notice published on April 11, 2003 (68 FR 17797–17800). Additional meetings were announced in a **Federal Register** notice published on August 6, 2003 (68 FR 46606–46607). More information regarding this review can be found at the SAB Web site at *http://*

www.epa.gov/sab/panels/SAB 3MRAmspanel.html.

The CASAC, comprised of seven members appointed by the Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or ''Act'') (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and National Ambient Air Quality Standards (NAAQS) under sections 108 and 109 of the Act. The CASAC, which is administratively located under the EPA Science Advisory Board Staff Office, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC PM Review Panel consists of the CASAC, supplemented by expert consultants. The CASAC PM Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The CASAC PM Review Panel is charged in part with providing advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS for particulate matter. The February 3, 2004 teleconference is a follow-on to the CASAC PM Review Panel's review of the EPA Air Quality Criteria Document for Particulate Matter (Fourth External Review Draft), which took place in a public meeting held in Research Triangle Park on August 25–26, 2003 (68 FR 47060, August 7, 2003); and which was continued during a public teleconference held on October 3, 2003 (68 FR 53734, September 12, 2003); and a public meeting which took place in Research Triangle Park on November 12–13, 2003 (68 FR 60363, October 22, 2003). More information regarding this review can be found at the SAB Web site at *http://www.epa.gov/sab/pdf/casac104002.pdf.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its teleconferences and meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, for teleconference meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by the DFO no later than noon Eastern Time five business days prior to each teleconference in order to reserve time on the teleconference agenda. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least seven business days prior to the teleconference date so that the comments may be made available to the committee or panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format)).

Meeting Accommodations

Individuals requiring special accommodation to access these teleconferences, should contact the DFO at least five business days prior to the teleconference so that appropriate arrangements can be made.

Dated: December 30, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–209 Filed 1–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0318; FRL–7328–5]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0318. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUPs:

68467–EUP–7. Issuance. Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN

46268–1054. This EUP allows the use of the plant-incorporated protectant *Bacillus thuringiensis* Cry34/35Ab1 proteins and the genetic material necessary for their production (from the insert of plasmid PHP17662) in corn on 624 acres of field corn to conduct insect resistance management, maize agronomic observation, maize breeding and observation nursery, maize demonstration, maize efficacy, maize hybrid production plots, maize regulatory field studies, non-target organism, and herbicide tolerance trials. The program is authorized only in the States of California, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Wisconsin, and the Commonwealth of Puerto Rico. The EUP is effective from June 24, 2003 to May 1, 2004.

29964–EUP–5. Issuance. Pioneer Hi-Bred International, Inc., P.O. Box 552, Johnston, Iowa 50131–0552. This EUP allows the use of the plant-incorporated protectant *Bacillus thuringiensis* Cry34/35Ab1 proteins and the genetic material necessary for their production (from the insert of plasmid PHP17662) in corn on 624 acres of field corn to conduct insect resistance management, maize agronomic observation, maize breeding and observation nursery, maize demonstration, maize efficacy, maize hybrid production plots, maize regulatory field studies, non-target organism, and herbicide tolerance trials. The program is authorized only in the States of California, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Wisconsin, and the Commonwealth of Puerto Rico. The EUP is effective from June 24, 2003 to May 1, 2004.

A tolerance has been established for residues of *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn when used as plant-incorporated protectants in the food and feed commodities of field corn, sweet corn, and popcorn.

The **Federal Register** document announcing receipt of these and other Cry34/35Ab1 EUPs (68 FR 12073) (FRL–7286–3) received 42 comments, with 4 of these being received after the comment due date. Thirty commentors were in favor of EPA granting the EUPs. Twelve commentors urged the Agency not to approve them. Commentors included farmers and other private citizens, medium to smaller seed companies, the American Soybean Association, and the environmental groups Hawaii Genetic Engineering Action Network and Earthjustice.

Commentors in favor of EPA granting the EUPs cited the reduced use of conventional insecticides, insect resistant management benefits, a lack of antibiotic resistance marker proteins in the Cry34/35Ab1 corn products, the need for competition in the marketplace for rootworm resistant corn, and the need to test the products this season. Commentors against EPA's granting of the permits cited that there was no tolerance exemption for Cry34/35Ab1, allergen and toxin concerns, concerns regarding adequate containment, and concerns regarding EPA enforcement.

First, EPA has, in fact, granted a temporary exemption from the requirement of a tolerance for *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn, 40 CFR 180.1242 (68 FR 40178) (FRL–7310–1). In doing so, EPA concluded that there was a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production. In addition, although the subject EUPs have a temporary tolerance exemption associated with them and under this condition EPA would not normally require such containment, both Dow and Pioneer's experimental programs require containment consisting of border rows; (distance isolation of 660 ft., or reproductive isolation, or temporal isolation); as well as having seed produced reserved for experimental work or future plantings. Finally, EPA's regional offices currently cooperate with State agencies in the enforcement of plant-incorporated protectant EUPs.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 19, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–208 Filed 1–5–04; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 8, 2004, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—December 11, 2003 (Open and Closed)

B. Reports

- Corporate/Non-corporate Report;
- Farm Credit System Bank Board Compensation;
- Financial Audit.

Dated: December 31, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–320 Filed 1–2–04; 12:22 pm]

BILLING CODE 6705–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2640]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 23, 2003.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this public notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased

from the Commission's copy contractor, Qualex International, (202) 863–2893. Oppositions to these petitions must be filed by January 21, 2004. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the Table of Allotments FM Broadcast Stations (Fortuna Foothills, Arizona and Wellton, Arizona) (MB Docket No. 03–163, RM–10734).

Number of Petitions Filed: 1.

Subject: In the Matter of the Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band (IB Docket No. 02–19).

Number of Petitions Filed: 1.

Subject: In the Matter of the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–128).

Number of Petitions Filed: 3.

Subject: In the Matter of the FM Table of Allotments FM Broadcast Stations (Charles Town, West Virginia and Stephens City, Virginia) (MB Docket No. 03–12, RM–10627).

Number of Petitions Filed: 1.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–105 Filed 1–5–04; 8:45 am]

BILLING CODE 6712–01–M

Federal Reserve System

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, January 12, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, January 2, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–333 Filed 01–02–04; 2:03 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science and Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary (OS) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Chapter AC, Office of Public Health and Science (OPHS), as last amended at 67 FR 71568–70, dated December 2, 2002; and Part H, Centers for Disease Control and Prevention, as last amended at 68 FR 47065–76, dated August 7, 2003, are being amended to reflect the transfer of the National Vaccine Program Office (NVPO) from the Centers for Disease Control and Prevention to the Office of Public Health and Science. The NVPO will be headed by a Director who will report to the Assistant Secretary for Health. The changes are as follows:

I. Under Part H, Centers for Disease Control and Prevention, Chapter CA, ''Office of the Director'': delete the title and functional statement for the National Vaccine Program Office (HCA8) in its entirety.

II. Under Part A, Chapter AC, Office of Public Health and Science, make the following changes:

A. Under paragraph AC.10 Organization, insert the following line at the end of the listing:

M. National Vaccine Program Office (ACP).

B. Under paragraph AC.20, Functions, make the following changes:

1. Delete paragraph, ''B. Immediate Office (ACA),'' in its entirety, and replace with the following:

B. The Immediate Office (ACA): (1) Provides direction to program offices within OPHS; (2) provides advice to assure that the Department conducts broad based public health assessments designed to better define public health problems and to design solutions to those problems; assists other components within the Department in anticipating future public health issues and problems, and provides assistance to ensure that the Department designs and implements appropriate approaches, interventions, and evaluations, to maintain, sustain, and improve the health of the Nation; (3) at the direction of the Secretary, provides assistance in leading and managing the implementation and coordination of Secretarial decisions for Public Health Service Operating Divisions and, at the Secretary's direction, and for that purpose, draws on staff divisions and other organizational units for assistance in regard to legislation, budget, communications, and policy analysis; (4) provides a focus for leadership on matters including recommendations for policy on population-based public health and science and at the Secretary's direction leads and/or coordinates initiatives that cut across agencies and operating divisions; (5) provides advice to the Secretary and senior Department officials on budget and legislative issues of the Public Health Service Operating Divisions; (6) provides support for the Office of the Surgeon General in the exercise of statutory requirements and assigned activities; (7) works in conjunction with the Public Health Service Operating Divisions, and others, in promoting relationships among and between State and local health departments, academic institutions, professional and constituency organizations, and the Department; (8) works in conjunction with the Assistant Secretary for Planning and Evaluation on matters of science policy analysis and development; (9) provides administrative support to the Office of Global Health Affairs; (10) provides leadership for and participates in public health system improvement and development activities, particularly as they relate to population-based public health and the public health infrastructure; (11) communicates and interacts with national professional and constituency organizations on matters of public health and science; (12) provides departmental liaison for military and veterans issues in the form of advice and counsel to departmental officials; works with veterans associations and organizations; develops approaches within the Department to improve services to veterans and the military; and assists to bring focus on the needs of veterans and military families; (13) proposes findings of research

misconduct and administrative actions in response to allegations of research misconduct involving research conducted or supported by the Public Health Service (PHS) OPDIVs, including reversal of an institution's no misconduct finding or opening of a new investigation; (14) responsible for management and oversight of human research subjects protections functions and related activities where research involves human subjects; (15) provides oversight and direction to the Regional Health Administrators (I–X) and their associated staff; (16) directs and manages the PHS Commissioned Corps, which includes a cadre of health professionals, and the associated personnel systems in support of the missions of the Department of Health and Human Services, U.S. Public Health Service, and agencies in which officers are assigned or detailed to, and provides oversight and direction for officer assignments and professional development; (17) provides policy and related oversight of the Commissioned Corps: and (18) manages the vaccine and immunization related activities for the Secretary.

2. At the end of Paragraph L, insert the following new component: ''*M. National Vaccine Program Office (ACP)'': The Office:* (1) Advises the Assistant Secretary for Health (the Director of the National Vaccine Program) regarding issues and concerns identified with the implementation of the responsibilities of the National Vaccine Program; (2) develops and provides the Assistant Secretary for Health an annual plan for the implementation of the responsibilities of the NVPO; (3) develops data and conducts analyses of Federal spending on vaccines and vaccine-related activities; (4) provides executive-secretary, staff and administrative support to the National Vaccine Advisory Committee; and (5) coordinates preparation and submission of the annual National Vaccine Report for transmittal by the Assistant Secretary for Health.

III. Delegation for Authority: All delegations and redelegations of authority made by officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Effective Date: This reorganization is effective on the date of signature.

Dated: December 22, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–120 Filed 1–5–04; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1373–N]

RIN 0938–AN00

Medicare Program; Notice of One-Time Appeal Process for Hospital Wage Index Classification

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 508(a) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, this notice establishes a one-time appeal process by which a hospital may appeal the wage index classification otherwise applicable to the hospital.

DATES: *Effective Date:* This notice is effective January 1, 2004.

Deadline for Submission of Appeal Requests: Appeal requests will be considered if the Medicare Geographic Classification Review Board receives them, at the appropriate address, no later than 5 p.m. EDT on February 15, 2004.

Applicability: Geographic redesignations granted under this process are applicable to discharges occurring during the 3-year period beginning with discharges on or after April 1, 2004 and before April 1, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the inpatient prospective payment system (IPPS). Hospitals can elect to reclassify for the wage index or the standardized amount, or both, and as individual hospitals or as groups. Generally, hospitals must be proximate to the labor market area to which they are seeking reclassification and must demonstrate characteristics similar to hospitals located in that area. Hospitals must apply for reclassification to the MGCRB. The MGCRB issues its decisions by the end of February for reclassifications to become effective for the following fiscal year (beginning October 1). The regulations applicable to reclassifications by the MGCRB are located in §§ 412.230 through 412.280.

Section 1886(d)(10)(D)(v) of the Act provides that, beginning with FY 2001, an MGCRB decision on a hospital reclassification for purposes of the wage index is effective for 3 fiscal years, unless the hospital elects to terminate the reclassification. Section 1886(d)(10)(D)(vi) of the Act provides that the MGCRB must use the 3 most recent years' average hourly wage data in evaluating a hospital's reclassification application for FY 2003 and any succeeding fiscal year.

Section 304(b) of Public Law (Pub. L.) 106–554 provides that the Secretary must establish a mechanism under which a statewide entity may apply to have all of the geographic areas in the State treated as a single geographic area for purposes of computing and applying a single wage index, for reclassifications beginning in FY 2003. The implementing regulations for this provision are located at § 412.235.

Section 1886(d)(8)(B) of the Act permits a hospital located in a rural county adjacent to one or more urban areas to be designated as being located in the Metropolitan Statistical Areas (MSA) to which the greatest number of workers in the county commute if—(1) the rural county would otherwise be considered part of an urban area under the standards published in the **Federal Register** for designating MSAs (and for designating New England County Metropolitan Areas (NECMAs)), and (2) if the commuting rates used in determining outlying counties (or, for New England, similarly recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs (or NECMAs). Hospitals that meet these criteria are deemed urban for purposes of the standardized amounts and for purposes of assigning the wage index.

On June 6, 2003, the Office of Management and Budget (OMB) issued OMB Bulletin No. 03–04, announcing revised definitions of MSAs and new definitions of Micropolitan Statistical Areas and Combined Statistical Areas. The new definitions recognize 49 new Metropolitan Statistical Areas and 565 new Micropolitan Statistical Areas, as well as extensively revising the construct of many of the existing Metropolitan Areas. We are in the process of evaluating these new MSA

definitions. At this time, however, we have not adopted these revised MSA definitions for purposes of the wage index. Therefore, references to MSAs (and, by inference, NECMAs) in this notice refer to the MSAs currently used for the wage index, those in place prior to the new definitions announced in June 2003 by OMB.

II. Provisions of the Notice

Section 508(a) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MPDIMA) (Pub. L. 108–173) provides that, by January 1, 2004, the Secretary must establish by instruction or otherwise, a process for hospitals to appeal their wage index classification. This notice establishes that process.

A. One-Time Appeal Process Requirements

Under this process, a qualifying hospital may appeal the wage index classification otherwise applicable to the hospital and apply for reclassification to another area of the State in which the hospital is located (or, at the discretion of the Secretary, to an area within a contiguous State). Such reclassifications are applicable to discharges occurring during the 3-year period beginning April 1, 2004 and ending March 31, 2007.

The process requirements under section 508(a)(2) and (a)(3) of Pub. L. 108–173 are as follows:

- A hospital must file an appeal request no later than February 15, 2004.
- The MGCRB will consider the request of any qualifying hospital to change its geographic classification for purposes of determining the hospital's area wage index. The MGCRB will issue a decision on the requests. There shall be no further administrative review or judicial appeal of the MGCRB's decision.
- If the MGCRB determines that the hospital is a qualifying hospital, the hospital shall be reclassified to the selected area within the State where the hospital is located (or, at the discretion of the Secretary, to an area within a contiguous State). The approved reclassification will be effective for 3 years beginning with discharges occurring on April 1, 2004.

Under section 508(c) of Pub. L. 108–173, a ''qualifying hospital'' is defined as a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Act) that—

- Does not qualify for a change in wage index classification under paragraphs (8) or (10) of section 1886(d) of the Act on the basis of requirements relating to distance or commuting. Current distance and commuting criteria for individual hospitals seeking reclassification are set forth in § 412.230(b) of the regulations. Rural referral center and sole community hospital distance requirements are at § 412.230(a)(3)(ii). Generally, hospitals must demonstrate a close proximity to the labor market area to which they are seeking reclassification. The proximity criteria are met if—(1) for an urban hospital the distance from the hospital to the area to which the hospital is reclassifying is no more than 15 miles; and (2) for a rural hospital, the distance from the hospital to the area to which the hospital is reclassifying is no more than 35 miles (§ 412.230(b)(1)) or; at least 50 percent of the hospital's employees reside in the area (§ 412.230(b)(2)). Rural referral centers and sole community hospitals are required to reclassify to the urban or another rural area closest to the hospital. (§ 412.230(a)(3)(ii)); and,
- Meets such other criteria, such as quality, as the Secretary may specify by instruction or otherwise.

Section 508(b) specifies that approved requests under this process must not affect the wage index computation for any area or any other hospital and shall not be budget neutral. The provisions of this section shall not affect payment for discharges occurring after the end of the 3-year period, which ends March 31, 2007. Finally, as specified, the total additional expenditures of this section shall not exceed $900 million.

Under § 412.273(b), a hospital may terminate an approved 3-year reclassification for purposes of the wage index within 45 days of publication of CMS's annual notice of proposed rulemaking concerning changes and updates to the IPPS for the fiscal year for which the termination is to apply. That is, a hospital may terminate its wage index reclassification during either the first, second, or third year of that reclassification. In order to terminate a reclassification under this one-time process, a hospital should follow the process at § 412.273(b). Terminations will be effective with discharges during the following Federal fiscal year (beginning October 1). Hospitals whose applications under the one-time process are approved will not be able to terminate such a reclassification prior to October 1, 2004.

B. One-Time Appeal Process Criteria

All hospitals seeking reclassification under this one-time process *must submit an application consistent with the process described in section II.D. of this notice.* Hospitals that have submitted an application under the routine MGCRB application process must still submit a separate application for consideration by the MGCRB under this process. The MGCRB must approve a request, from any subsection (d) hospital, for geographic reclassification for purposes of wage index under this process if both of the following criteria are met (*see* section II.C. of this notice for a discussion of the rationale for the criteria). For purposes of applying these criteria, average hourly wages (AHW) refers to the 3-year average AHWs published in the August 1, 2003 final rule (68 FR 45345) for hospitals (Table 2) and MSAs and rural areas (Tables 3A and 3B, respectively), as corrected in the October 6, 2003 **Federal Register** (68 FR 57732). As noted above, references to MSAs refer to the MSA definitions currently employed for the wage index, those in place prior to OMB's announcement of revised MSAs in June 2003. Note that *both* of the following criteria must be met in all reclassifications under this process:

1. A hospital meets neither the distance requirement set forth in § 412.230(b)(1) nor the commuting requirement set forth in § 412.230(b)(2) (or fails to meet § 412.230(a)(3)(ii) in the case of a rural referral center or sole community hospital) to be reclassified into the MSA for which the request under the process established by this notice is submitted.

2. The hospital does not otherwise qualify for reclassification effective for discharges on or after October 1, 2004 (except in the case of criteria 2(b) and 2(g) below), under the reclassification process at 42 CFR part 412 subpart L, and one of the following criteria is met:

a. The hospital is an urban hospital located in a State with fewer than 10 people per square mile. The hospital may only reclassify under the process established by this notice to another MSA within its State (Based on the 2000 Census data, only urban hospitals in the States of Montana, North Dakota, South Dakota, and Wyoming meet this criteria.)

b. The hospital is currently (for FY 2004) reclassified into another MSA and the hospital's 3-year AHW is at least 108 percent of the AHW of the hospitals geographically located in the MSA to which the hospital is currently reclassified. The hospital may only reclassify under this process to an MSA within the hospital's State that has an area AHW nearest to, but not less than, the hospital's AHW. If there is no such MSA, the hospital will receive a wage index calculated based upon its own AHW. If a hospital that otherwise would be reclassified effective for discharges on or after October 1, 2004 is approved

for reclassification under this one-time appeal process based upon this criterion, any other reclassifications shall be considered to have been terminated effective for discharges on or after April 1, 2004.

c. The hospital is currently (for FY 2004) reclassified by the MGCRB to another MSA but, upon applying to the MGCRB for FY 2005, is ineligible for reclassification because its AHW is now less than 84 percent (but greater than 82 percent) of the AHW of the hospitals geographically located in the MSA to which the hospital applied for reclassification for FY 2005. The hospital may only reclassify under this process to an MSA within its State with an FY 2004 wage index value that is nearest to the FY 2004 wage index the hospital currently receives.

d. The hospital was part of an urban county group reclassification application to the MGCRB for FY 2004 or FY 2005 in accordance with § 412.234, but the application did not meet the standardized amount criteria set forth in § 412.234(c). Individual hospitals that were part of the urban county group reclassification application may reclassify under this process only to the MSA specified in the group application.

e. The hospital is located in an MSA that experiences at least a 6 percent decrease in its FY 2004 wage index compared to its FY 2003 wage index; and a hospital with an AHW at least 10 percent higher than the MSA's AHW that reclassified into the MSA during FY 2003 has reclassified elsewhere for FY 2004. The hospital may only reclassify under this process to an MSA within its State with an FY 2004 area wage index value that is nearest to what it would have received if the hospital that previously reclassified into the MSA had continued to reclassify into the MSA for FY 2004.

f. One of the following criteria are met:

(1) The hospital is located in an MSA that is adjacent to an MSA (or urban county) that was reclassified under section 152 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113 and the hospital's FY 2004 wage index is at least 10 percent less than the FY 2004 wage index of the adjacent MSA (or urban county) that was reclassified under section 152 of Pub. L. 106–113.

(2) The hospital is located in an MSA that is adjacent to an MSA identified in sections 153 or 154(a) of Pub. L. 106–113, and the hospitals' FY 2004 wage index is at least 10 percent less than the FY 2004 wage index of the adjacent MSA identified in section 153 or 154(a) of Pub. L. 106–113.

In both cases, the hospital may only reclassify under this process to the adjacent MSA (or urban county) identified in the applicable section of Pub. L. 106–113.

g. The hospital received reclassification by act of Congress that expired on September 30, 2003. The hospital may only reclassify under this process to the MSA to which it was reclassified by act of Congress, unless it would not qualify to reclassify under this process into such MSA because it fails to meet criterion 1 above. If the later situation applies, the hospital may reclassify to another MSA in its State, where it would meet criterion 1 above, with a FY 2004 wage index that most closely approximates the FY 2004 wage index of the area to which the hospital was reclassified by statute. Nothing in this criterion shall be viewed as superseding the reclassifications extended by section 508(f) of Pub. L. 108–173.

h. After decisions by the MGCRB based on hospitals meeting criteria 2(a) through 2(g) above, as well as our implementation of section 508(f) of Pub. L. 108–173, the MGCRB may approve a hospital to be reclassified if the hospital's 3-year AHW is at least 106 percent of the 3-year AHW of the hospitals geographically located in the area in which the hospital is located. The MGCRB will reclassify a hospital under this process to the MSA within the hospital's State (in the case of a rural hospital, or the nearest Statewide rural area of a contiguous State) that has an area 3-year AHW nearest to the hospital's 3-year AHW. However, to be classified to that area, the hospital's 3-year AHW must be at least 82 percent of the 3-year AHW of the area to which it would be reclassified. The requests submitted under this criterion will be considered and approved by the MGCRB in rank order. Ranking will be based on the percentage difference between the hospital's 3-year AHW and the 3-year AHW of the area where the hospital is geographically located. A hospital application received under criterion 2(h) will receive a 2.5 percentage point increase in its ranking for each of the following two criteria that are met—

(1) The hospital has either:

- By January 23, 2004, submitted performance data on any of the 10 measures that were in the National Voluntary Hospital Reporting Initiative on November 15, 2003 meeting the sample size specifications of either the Joint Commission on Accreditation of Healthcare Organizations or CMS, or
- Pledged in a form dated before December 15, 2003 to submit such data; or

(2) The hospital is a rural hospital.

For example, an urban hospital with a 3-year AHW that is 110 percent higher than the 3-year AHW for the area where it is located would be ranked as though its 3-year AHW were 112.5 percent if that hospital had submitted quality data by January 23, 2004. If the hospital were a rural hospital, it would be ranked as though its 3-year AHW were 115 percent of its area's 3-year AHW. Hospitals applying in accordance with criterion 2(h) will only be approved after the MGCRB decides upon all applications meeting the criteria specified in 2(a) through 2(g) and section 508(f) of Pub. L. 108–173.

C. Rationale for Criteria

Criteria 2(a) through 2(g) above are designed to assist categories of hospitals that fall just beyond the current reclassification criteria. Although we generally believe our current reclassification process appropriately balances the requirement at section 1886(d)(3)(E) of the Act to adjust payments to reflect the ''relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level'' and the provisions for geographic reclassification at section 1886(d)(8) and (10) of the Act, section 508 of Pub. L. 108–173 was intended to address, on a one-time basis, situations that do not meet the established criteria. Specific rationale for each criterion follows:

a. In States with low population densities, employees are likely to commute greater distances to work. Dispersed urban areas are therefore more likely to compete for employees than are urban areas in more densely populated States. We established the population density and number of MSAs based on our analysis indicating these criteria best captured such a Statewide urban labor market situation. We did not include rural hospitals under this criterion because we already employ Statewide rural labor markets.

b. This criterion recognizes that some reclassified hospitals have an AHW much higher even than a nearby MSA into they have already reclassified. We believe it is appropriate to provide some relief for these situations under this one-time appeals process. Because, in some cases, the AHW of hospitals meeting this criterion are likely to exceed those of any labor market area within the State, we are providing under this one-time appeal process that a hospital qualifying under this criterion may receive a wage index based on its own

AHW if there is no MSA AHW at least equal to the hospital's AHW.

c. This criterion recognizes anomalous situations where previously reclassified urban hospitals would meet the lower criterion for rural hospitals to reclassify, but, for FY 2005, fail to meet the urban hospital wage comparability criterion.

d. This criterion recognizes situations where hospitals have been denied reclassification because they failed to meet the standardized amount criterion, even though the hospital would have received no benefit from a standardized amount reclassification because section 501 of Pub. L. 108–173 eliminated the differential in the standardized amounts.

e. This criterion would protect hospitals from the negative impact on an MSA's wage index resulting from a hospital with a significantly higher AHW that no longer reclassifies into the MSA. The wage index decrease standard and the AHW difference standard are designed to focus this criterion upon situations where the reclassification elsewhere of a particular hospital has a truly negative impact on the MSA's wage index.

f. This criterion would alleviate large disparities in wage indexes resulting from statutory reclassifications. It is limited to adjacent MSAs because these are the labor market areas most impacted by the statutory reclassifications (that is, rather than Statewide rural labor market areas).

g. These statutory reclassifications would have expired on September 30, 2003 but were extended by section 508(f) of Pub. L. 108–173 and would otherwise expire on September 30, 2004. Because of the special circumstances of these hospitals as recognized by Congress, we believe it is appropriate to allow them to reclassify under this one-time appeal process. However, like other hospitals, these hospitals must meet criterion 1 in order to be considered qualifying hospitals under the statute. Therefore, if a hospital would not meet criterion 1 with regard to the MSA to which Congress reclassified it, then the hospital must reclassify to another MSA in its State where it would meet criterion 1 and with a FY 2004 wage index that most closely approximates the FY 2004 wage index of the area to which Congress reclassified it.

h. This criterion would permit other hospitals that are not currently reclassified to be reclassified based upon the relationship between their AHW and the AHW of the area where they are geographically located. We believe it is appropriate to give priority to hospitals whose AHW exceeds the area's AHW by the largest percentage and demonstrate a significant disparity (that is at least 106 percent of the AHW of the area in which they are located) between the hospital's current AHW and the area AHW. Furthermore, rural hospitals tend to have lower AHWs in general than urban hospitals. Therefore, we believe it is appropriate to provide a bonus under this criterion to rural hospitals. Finally, we believe in light of Congress' mention of the submission of quality data in section 508(c)(2), and the importance for the future of health care quality to have performance measures that allow the Government to evaluate quality, it is appropriate to give preferential treatment to hospitals that have submitted these data.

D. One-Time Appeal Request Procedure

We are providing that a hospital seeking reclassification under section 508 of Pub. L. 108–173 must submit a request in writing by February 15, 2004, to the MGCRB, with a copy to CMS. The request must be mailed. Facsimile or other electronic means are not acceptable.

The request must contain the following information:

- The hospital's name and street address.
- The hospital's Medicare provider number.
- For all communications regarding the appeals request, provide the name, title, and telephone number of a contact person.
- Name of the area/county (include the MSA/identification number) where the hospital is located.
- Name of the area/county (refer to the criteria) where the hospital wishes to be reclassified.
- A statement of which criterion is applicable.

A hospital's appeal request must be received by the MGCRB no later than 5 p.m. EDT on February 15, 2004. The request must be typed or clearly printed in ink.

Hospitals must mail or deliver an original copy of their appeal request to the MGCRB's at the following address: Medicare Geographic Classification Review Board, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670.

Hospitals must simultaneously send an informational copy of their completed appeal request to the following address: Centers for Medicare and Medicaid Services, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, Attention: One-Time Appeals Process, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Hospitals may want to send their application by a delivery method that guarantees a signed receipt, which indicates delivery and date of delivery of their appeal request to the MGCRB. The MGCRB and CMS addresses listed above are applicable for both United States mail and courier service delivery.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, the collection requirements associated with section II.B. of this notice are currently approved under OMB PRA approval number 0938–0573, ''Medicare Geographic Classification Review Board,'' with a current expiration date of October 31, 2005. In addition, we believe that any information collected subsequent to an administrative action, such as an appeal of a geographic classification, are exempt from the PRA as stipulated under 5 CFR 1320.4(a)(2).

Consequently, this document does not impose any new information collection and recordkeeping requirements that would require a review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Waiver of the Delay in Effective Date

Section 903 of Pub. L. 108–173 amended section 1871(e)(1) of the Act to specify that a substantive change shall not become effective before the end of the 30-day period that begins on the date that the Secretary has issued or published the substantive change. Section 903 of Pub. L. 108–173 also states the substantive change can take

effect on a date that precedes the 30-day period if the Secretary finds that waiver of this period is necessary to comply with statutory requirements, or is contrary to the public interest. In addition, it specifies that the issuance or publication must include a brief statement of the reasons for such finding.

This notice meets the waiver criteria described in section 1871(e)(1)(B)(ii) of the Act, since section 508 of Pub. L. 108–173 requires the Secretary to establish a one-time appeal process by January 1, 2004 and directs that the appeals be ''filed as soon as possible after the date of enactment of the Act.'' In order for the process to be established and for appeals to be filed as soon as possible, the process must be in effect, and there can be no delay in the effective date.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice would increase payments to hospitals by up to $900 million, and thus is considered a major rule.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this notice does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

We estimate the impact of this provision will be to increase payments to hospitals by up to $900 million. As noted above, section 508 of Pub. L. 108–173 specifies that the aggregate amount of additional expenditures resulting from the application of this section shall not exceed $900 million. Section 508(f) requires that hospitals previously reclassified by an act of Congress, but such reclassification expired effective with discharges on or after October 1, 2003, shall have their reclassifications reinstated effective April 1, 2004 through September 30, 2004. The extra payments for these reclassification extensions under section 508(f) are also subject to the $900 million limit.

We estimate the increased payments under section 508(f) will total approximately $33 million. The higher payments associated with reclassifications under this one-time appeals process are not expected to exceed a total of $867 million (during the 3-year period covered by the provision).

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 508(a) of the Public Law 108–173.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 19, 2003.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: December 29, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–32337 Filed 12–31–03; 2:18 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4065–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on February 5, 2004. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for February 5, 2004, from 9:15 a.m. to 4 p.m. e.s.t.

Deadline for Presentations and Comments: January 29, 2004, 12 noon e.s.t.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *ljohnson3@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of the Department of Health and Human Services (the Secretary) the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this panel on January 21, 1999 (64 FR 7899), and approved the renewal of the charter on January 21, 2003. The panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: James L. Bildner, Chairman and Chief Executive Officer, Tier Technologies; Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, American Association of Retired Persons (AARP); Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, President and Chief Executive Officer, American Society of Association Executives; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State Health Policy, Rutgers University and Chairperson of the Advisory Panel on Medicare Education; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

The agenda for the February 5, 2004, meeting will include the following:

- Recap of the previous (November 20, 2003) meeting.
- Centers for Medicare & Medicaid Services update/ Center for Beneficiary Choices update.
- Medicare Prescription Drug, Improvement and Modernization Act update.
- Public comment.
- Listening session with CMS leadership.
- Next steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic must submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop S2–23–05, Baltimore, MD 21244–1850 or by email at *1johnson3@cms.hhs.gov* no later than 12 noon, e.s.t., January 29, 2004. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, (e.s.t.), January 29, 2004. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations must contact Ms. Johnson at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3). (Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: December 29, 2003.

Dennis G. Smith,

Administrator (Acting), Centers for Medicare & Medicaid Services.

[FR Doc. 03–32321 Filed 12–31–03; 11:38 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2003M–0442, 2003M–0443, 2003M–0444, 2003M–0445, 2003M–0446, and 2003M–0447]

Medical Devices Regulated by the Center for Biologics Evaluation and Research; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved by the Center for Biologics Evaluation and Research (CBER). This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**, providing instead to post this information on the Internet at *http://www.fda.gov*. In addition, the regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during the quarter. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of PMAs approved by CBER for which summaries of safety and effectiveness were placed on the Internet from December 5, 2001, through September 30, 2003. There were

no denial actions during the period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE OCTOBER 1, 2001, THROUGH SEPTEMBER 30, 2003.

PMA No./Docket No.	Applicant	Trade Name	Approval Date
BP 000009/2003M–0442	Calypte Biomedical Corp.	Calypte HIV–1 Urine EIA	January 12, 2001
BP 010009/2003M–0443	Calypte Biomedical Corp.	Cambridge Biotech HIV–1 Urine Western Blot	June 21, 2001
BP 010001/2003M–0444	BioMérieux, Inc.	NucliSens HIV–1 QT	November 19, 2001
BP 000028/2003M–0445	Bayer Corp.	The VERSANT HIV–1 RNA 3.0 Assay (bDNA)	September 11, 2002
BP 010047/2003M–0446	OraSure Technologies, Inc.	OraQuick Rapid HIV–1 Antibody Test	November 7, 2002
BP–020066/2003M–0447	BioMérieux, Inc.	Vironstika HIV–1 Plus O Microelisa System	June 6, 2003

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cber/products.htm*.

Dated: December 29, 2003.

Jesse Goodman,

Director, Center for Biologics and Research.

[FR Doc. 04–132 Filed 1–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Immune Escape in Human Cancer: Mechanisms and Therapeutic Implicaitons.

Date: January 19–21, 2004.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Shadyside/Oakland, 5308 Liberty Avenue, Pittsburgh, PA 15224.

Contact Person: Shakeel Ahmad, Phd, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., Bethesda, MD 20892, (301) 594–0114, *amads@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 30, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–180 Filed 1–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Dental and Craniofacial Research Council, January 20, 2003, 8:30 a.m. to January 20, 2003, 4 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on December 23, 2003, 68 FR 74246.

The actual meeting will be held on January 20, 2004, not on January 20, 2003. The meeting is partially closed to the public.

Dated: December 30, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–182 Filed 1–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16796]

Secretarial Authorization for Certain Members and Employees of the U.S. Coast Guard to Serve on the Board of Control, Coast Guard Mutual Assistance

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Commandant of the Coast Guard has authorized certain Coast Guard personnel to serve on the Board of Control of Coast Guard Mutual Assistance, a non-federal military-welfare entity. These personnel will provide coordination, oversight, and advice to the management of the Coast Guard's Mutual Assistance Program.

FOR FURTHER INFORMATION CONTACT: CDR William J. Ziegler, (202) 267–2998.

SUPPLEMENTARY INFORMATION: Under authority of 10 U.S.C. 1033 and 1589, the Commandant of the Coast Guard, as authorized by the Secretary of Homeland Security, under Department

of Homeland Security Delegation No. 0170.1, has authorized the following members and employees of the Coast Guard to serve, without compensation, on the Board of Control of the Coast Guard Mutual Assistance. Participation of the designated officials in the activities of Coast Guard Mutual Assistance will not extend to participation in day-to-day operations.

Officers: Commandant of the Coast Guard, Admiral Thomas H. Collins, USCG (Chairman) (term began May 2002 and continues while ADM Collins serves as Commandant);

Assistant Commandant for Human Resources, Rear Admiral Kenneth T. Venuto, USCG (President) (term began July 2002 and continues while RADM Venuto serves as Assistant Commandant for Human Resources); and

Commander Pat Hannifin, USCG (Vice President) (July 2003–June 2006).

Members: Commander William J. Ziegler, USCG (July 2003–June 2006);

Lieutenant Commander Sheryl L. Dickinson, USCG (May 2003–June 2006);

Ensign Cari Bower, USCGR (May 2003–June 2006);

Chief Warrant Officer Jamie A. Rambo, USCG (July 2002–June 2005);

Master Chief Petty Officer Frank Welch, USCG (term began October 2002 and continues while MCPOCG Welch serves as the Master Chief Petty Officer of the Coast Guard);

Master Chief Petty Officer Charles W. Bowen, USCG (July 2002–June 2005);

Petty Officer First Class John E. Healy, USCG (July 2002–June 2005);

Petty Officer First Class Lawrence J. Connell, USCG (July 2003–June 2006);

Ms. Janice L. Gray (July 2002–June 2005);

Ms. Marta E. Denchfield (July 2001–June 2004);

Mr. Jay Fowler (July 2003–June 2006); and

Mrs. Jennifer Rechsteiner (July 2003–June 2006).

Alternates: Chief Petty Officer Rockwood Ennis, USCG (term began December 2000 and continues while MCPOCG Welch serves as the Master Chief Petty Officer of the Coast Guard);

Master Chief Petty Officer Edna M. Doak, USCGR (July 2002–June 2005);

Petty Officer Third Class Caleb C. Mitson, USCG (July 2003–June 2006).

Authority: 10 U.S.C. 1033, 1589; Department of Homeland Security Delegation No. 0170.1 (2) (14).

Dated: December 29, 2003.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

[FR Doc. 04–225 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on the information FEMA requires to address close basin lake continuous flooding events. The information is required by FEMA regulation 44 CFR part 61, Appendix A(2), Standard Flood Insurance Policy, section VII., General Conditions, T., Continuous Lake Flooding and FEMA Policy Guidance for Closed-Basin Lakes.

SUPPLEMENTARY INFORMATION: The information collections for closed basin lake endorsement under the standard flood insurance policy allows policyholders to file a total loss claim for an insured building that is actually damaged or under imminent threat of flooding before the structure has been inundated 90 days by lake water. State, local and tribal governments and property owners must meet specific requirements set forth in FEMA regulatory and policy guidance before policyholders can qualify for insurance claim benefits.

Collection of Information

Title: Closed-Basin Lake Endorsement Requirements.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0050.

Abstract: A closed basin lake is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. FEMA Regional Directors shall determine that State, local and tribal governments satisfy the FEMA regulatory and policy guidance (including that the local government or tribe has established new building restrictions and the State is providing the support needed to eliminate future flood losses) before policyholders can qualify for insurance claim benefits under the closed basin lake standard flood insurance policy endorsement.

The following information is required from State, local and tribal governments and property owners:

(1) A community, county, or other local jurisdiction must request in writing to the FEMA Regional Director, through the State National Flood Insurance Program (NFIP) Coordinating Agency, that a community or area be designated a ''closed basin lake in order for homeowners and commercials interests to be eligible for a total loss claim under the closed basin lake standard flood insurance policy endorsement.

(2) State, local or tribal governments may request FEMA to amend the Flood Insurance Rate Map (FIRM) area of special consideration (ASC) to remove areas protected by the construction of additional certified flood control projects.

(3) State, local and tribal governments will conduct a risk assessment that:

(a) Identifies the number of structures at risk around the lake within the published ASC;

(b) Provides the current elevation of the structures and an assessment of insurance coverage;

(c) Identifies properties that have received previous flood insurance claim payments; and

(d) Identifies any new or ongoing construction within the published ASC.

(4) The State will enter into an agreement with FEMA prior to the provision of insurance claim payments. The agreement sets forth the actions the State will take to contribute to a permanent solution to the closed basin lake flooding problem and include the State's acknowledgment that relocation and acquisition of structures and property in the ASC may become a priority use of HMGP funds. Commitments in this agreement must be reflected in future FEMA/State agreements for Presidential disaster declarations.

(5) Tribes and local governments must:

(a) Participate in the NFIP (approved under OMB Number 1660–0004);

(b) Develop, adopt, and enforce permanent land use ordinances, or a temporary moratorium for a period not to exceed 6 months to be followed by a permanent land use ordinance, which prohibits the construction of any

residential or commercial buildings within the ASC.

(c) Agree to notify in writing by ''certified mail/return receipt requested'' all owners of structures within the ASC. The notification must inform property owners of the requirement that flood insurance must be purchased by the date specified by the FEMA Regional Director and maintained continuously thereafter in order to be eligible to receive a claim payment.

(d) Agree to maintain any property acquired with FEMA grant funds as open space, and to hold, manage, and enforce all property protected by easements, unless the property with the easement is donated by the owner to a non-profit land trust organization.

(e) Agree to declare and report any violations of the ordinance to FEMA so that flood insurance to the building can be denied.

(f) Complete and submit a biennial report to FEMA on Closed Basin Lake Conservation Easements. This report enables FEMA to assist communities in maintaining the open space requirements of the endorsement easements and ensuring future accelerated claim benefits for structures in a community's flood prone ASC.

(6) Property owners who are eligible for the closed basin lake endorsement must:

(a) Buy flood insurance by the designated date and maintain it continuously until a claim is filed.

(b) Under an endorsement claim, buy back their structure at negotiated salvage value.

(c) Obtain an elevation certificate of the new structure location (approved under OMB Number 1660–0008).

(d) Agree to relocate their structure outside the ASC. Property owners have several options concerning the disposition of their vacated land located in the ASC. They can either:

(1) Donate vacated property to the local government or a land use management organization that will deed-restrict it; or

(2) Establish an easement on the property that permits only certain agricultural or recreational uses and continue to use it for one of these exclusive purposes; or

(3) Apply to the local government and the State to have the land acquired through the HMGP or FMA programs. This option requires an easement or deed restriction in perpetuity regardless of future certified flood control projects. An easement or deed restriction must be in place prior to the approval of any insurance claim under the closed basin lake endorsement.

Affected Public: Individuals or Households, Business or Other For Profit, and State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 8,379.

FEMA information collections/forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
Letter Request to FEMA Through State NFIP For Designation in Program.	5	1	.30	2.5
Request FEMA to amend Flood Insurance Rate Map (FIRM)/Area of Special Consideration (ASC).	5	1	4	20
Conduct Risk Assessment	5	1	84	4,200
Agreement Between FEMA & Tribal, State, and local Government. For A Solution to Closed-Basin Lake Flooding.	5 (Meeting with the Governor.).	1	1	5
Develop, adopt, enforce permanent land use ordinance or establish a 6-month moratorium followed by a permanent land use ordinance.	5	1	3	15
Notification of Property Owners By Certified Mail Return Receipt Requested.	16,000	1	.15	4,000
Agree to maintain any property acquired and hold, manage, and enforce all property protected by easements.	5	1	2	10
Declare and report violations of ordinances or complete and submit to FEMA the biennial report on closed basin lake easements.	330	1 (once every two years).	.50	825 (annually).
Agree to relocate outside the ASC and donate vacated property, establish an easement, or apply to local government and the State to have land acquired.	100	1	4	400
Buy back their structure at negotiated salvage value.	100	1	4	400
Totals	16,031	7	88.45	8,379

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) verify and evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management

Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, e-mail address: *InformationCollection@fema.gov,* or facsimile number (202) 646–3347.

FOR FURTHER INFORMATION CONTACT: Contact Timothy Johnson, Insurance Examiner, Federal Insurance and Mitigation Administration, (202) 646–2791, facsimile number (202) 646–4327 or e-mail address: *Timonthy.Johnson@fema.gov* for additional information. You may contact Ms. Anderson for copies of the proposed information collection.

Dated: December 30, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 04–167 Filed 1–5–04; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fiscal Year 2004 Private Stewardship Grants Program; Request for Grant Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are soliciting project proposals for Federal assistance under the Private Stewardship Grants Program (PSGP). This document describes how to access the required information for applying for funding under the PSGP through Grants.gov. In the future all notices of Federal assistance and requests for proposals for the PSGP will be made available through Grants.gov. The Service will discontinue the use of the **Federal Register** for such announcements following this notification.

The PSGP provides grants and other assistance on a competitive basis to individuals and groups engaged in private, voluntary conservation efforts that benefit species listed or proposed as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), candidate species, or other at-risk species on private lands within the United States.

DATES: Project proposals must be received by the appropriate Regional Office (*see* Table 1 in **SUPPLEMENTARY INFORMATION**) no later than March 8, 2004.

ADDRESSES: For additional information, contact the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 under **SUPPLEMENTARY INFORMATION** below. Information on the PSGP is available through the Internet site Grants.gov (*http://www.grants.gov*), from the Branch of State Grants, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203, or electronically from our Web site at *http://endangered.fws.gov/grants/private_stewardship.html* or e-mail: *Privatestewardship@fws.gov.*

FOR FURTHER INFORMATION CONTACT: The Program Contact in the appropriate Regional Office identified in Table 1 under **SUPPLEMENTARY INFORMATION** or Don Morgan, Acting Chief, Branch of State Grants (703–358–2061).

SUPPLEMENTARY INFORMATION:

Background

The majority of endangered and threatened species depend, at least in part, upon privately owned lands for their survival. The help of landowners is essential for the conservation of these and other imperiled species. Fortunately, many private landowners want to help. Often, however, the costs associated with implementing conservation actions are greater than a landowner could undertake without financial assistance. The PSGP provides grants or other Federal assistance on a competitive basis to individuals and groups engaged in private, voluntary conservation efforts that benefit species listed or proposed as endangered or threatened under the Act, candidate species, or other at-risk species on private lands within the United States.

The United States Fish and Wildlife Service, Endangered Species Program is soliciting project proposals for Federal assistance under the PSGP (Catalog of Federal Domestic Assistance Number 15.632). This document describes how to access the required information for applying for funding under the PSGP through the Grants.gov website.

Dates: Proposals must be submitted to our Regional Offices within 60 days of this announcement.

Additional Information

Eligible PSGP projects include those by landowners and their partners who need technical and financial assistance to improve habitat or implement other activities on private lands. Under the PSGP, privately owned means land that is not owned by a governmental entity. The PSGP supports on-the-ground conservation actions as opposed to planning or research activities, and we will not fund the acquisition of real property either through fee title or easements.

Private landowners, individually or as a group, are encouraged to submit project proposals for their properties. Additionally, individuals or groups (for example land conservancies, community organizations, or conservation organizations) working with private landowners on conservation efforts are also encouraged to submit project proposals provided they identify specific private landowners who have confirmed their intent to participate on the project or provide other evidence in the project proposal to demonstrate landowner participation will occur.

A PSGP proposal must include at least 10 percent cost sharing (*i.e.*, at least 10 percent of total project cost) on the part of the landowner or other non-Federal partners involved in the project. The cost share must come from sources other than the PSGP or other Federal funds.

A complete program announcement and request for proposals may be accessed by visiting Grants.gov (www.grants.gov). Grants.gov is the new single point of entry for posting Federal government grant and other assistance opportunities. Potential applicants for the PSGP may access program overview information, the full text of the announcement, and the application package for this request for proposals by accessing Grants.gov and then using the FIND utility (''Find Grant Opportunities,'' or *http://fedgrants.gov/grants/servlet/SearchServlet/*) to access this information. Potential applicants may use the FIND utility by searching for the PSGP either by entering the title ''Private Stewardship Grants Program'' or by using the PSGP's Catalog of Federal Domestic Assistance (CFDA) number of 15.632.

TABLE 1.—LIST OF REGIONAL CONTACTS

Service region	States or territory where the project will occur	Address	Regional PSGP contact and phone No.
Region 1	Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.	U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181.	Heather Hollis (503–231–6241.
Region 1	California and Nevada	U.S. Fish and Wildlife Service, Federal Building, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825–1846.	Michael Fris (916–414–6464).
Region 2	Arizona, New Mexico, Oklahoma, and Texas	U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM 87102.	Mike McCollum (817–277–1100).
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.	U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, MN 55111–4056.	Peter Fasbender (612–713–5343).
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.	U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345.	Richard Gooch (404–679–7124).
Region 5	Connecticut, Delaware,District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	Diane Lynch (413–253–8628).
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486.	Pat Mehlhop (303–236–7400 ext. 225).
Region 7	Alaska	U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Michael Roy (907–786–3925).

The information collection requirements associated with the PSGP are approved under Office of Management and Budget (OMB) control number 1018–0118, which expires on July 31, 2005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: November 6, 2003.

Marshall Jones,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 04–3 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–1610–DR; GP–03–0153]

Notice of Availability of the Lakeview Resource Management Plan/Final Environmental Impact Statement and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability for the Lakeview Resource Management Plan (RMP)/Final Environmental Impact Statement (EIS) and Record of Decision (ROD).

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) has issued a ROD for the Lakeview Proposed RMP/Final EIS. The ROD documents the approval of the BLM's land use plan for approximately 3.2 million acres of public land managed by the Lakeview Resource Area, Lakeview District, located in Lake and Harney Counties in southeastern Oregon. This decision supercedes the High Desert, Warner Lakes, and Lost River Management Framework Plans.

DATES: A total of 15 protests and 3 comment letters were submitted during the 30-day protest period, which closed March 3, 2003. All of the letters were reviewed and responses provided by the BLM. The land use planning decisions contained in the approved RMP became effective on the date the BLM State Director signed the ROD. In addition, a number of project level implementation decisions are made in the ROD. These decisions are appealable in accordance with 43 CFR part 4. The appeal period will start on the date the notice of availability is published. These project level decisions will be implemented over time, as described in the ROD, as funding and staff are available.

FOR FURTHER INFORMATION CONTACT: Information about the plan and hard copies of the approved Lakeview RMP/ROD may be obtained by contacting Paul Whitman, BLM, Lakeview District, 1301 South G Street, Lakeview, Oregon 97630. Telephone (541–947–6110), Fax (541–947–6399), e-mail (*pwhitman@or.blm.gov*). Copies have been mailed to all on the mailing list. The document and supporting data are also available electronically in portable document format on CD–ROM and via the internet at *http://www.or.blm.gov/Lakeview/Planning/planning.htm.*

Dated: June 16, 2003.

Thomas E. Rasmussen,

Field Manager, Lakeview Resource Area.

[FR Doc. 03–32314 Filed 12–31–03; 2:18 pm]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Arkansas Post National Memorial Final EIS Availability

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement and General Management Plan for Arkansas Post National Memorial, Arkansas.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the Final Environmental Impact Statement and General Management Plan (EIS/GMP) for Arkansas Post National Memorial (ARPO). This notice is being furnished

as required by National Environmental Policy Act Regulations 40 CFR 1501.7.

DATES: The required no-action period on this Final EIS/GMP will expire 30 days after the Environmental Protection Agency has published a notice of availability of the Final EIS/GMP in the **Federal Register**.

ADDRESSES: Copies of the Final EIS/GMP are available by request by writing to Arkansas Post National Memorial, 1741 Old Post Road, Gillett, Arkansas 72055 or by telephone 870–548–2207, or by e-mail *arpo_superintendent@nps.gov.* The document can be picked-up in person at visitor center, 1741 Old Post Road, Gillett, Arkansas. The document can also be found on the internet at the NPS Planning website at: *http://planning.nps.gov/plans.cfm.*

FOR FURTHER INFORMATION CONTACT: John Paige, Job Captain, Denver Service Center—PSD, 12795 West Alameda Parkway, P.O. Box 25287, Denver, CO 80225–0287 or at telephone number 303–969–2356; or Superintendent, Arkansas Post National Memorial, 1741 Old Post Road, Gillett, Arkansas 72055, or by telephone 870–548–2207.

SUPPLEMENTARY INFORMATION: The ARPO consists of the Memorial and Osotouy Units. The memorial commemorates the human settlement near the confluence of the Arkansas and Mississippi Rivers and the events associated with the first European settlement in the Lower Mississippi River Valley by interpreting and fostering an appreciation of the interaction of the cultural groups, their histories, and their significance to the region.

The purpose of the general management plan is to set forth the basic management philosophy for the ARPO and to provide strategies for addressing issues and achieving identified management objectives. The Final EIS/GMP describes and analyzes the environmental impacts of a proposed action and two action alternatives for the future management direction of the ARPO. A no action alternative is also evaluated.

A notice of availability of the draft document was published in the **Federal Register** on January 16, 2003 (FR Vol. 68, No. 16). Written comments were accepted through March 25, 2003. The NPS considered all written comments in accordance with the 40 CFR part 1503.

Approximately 500 copies of the draft were distributed to government agencies, public interest groups, and individuals. The complete text of the draft General Management Plan/Environmental Impact Statement was posted on the NPS Web site.

A series of public meetings were held in DeWitt, Dumas, and Stuttgart, Arkansas, in March of 2003 to discuss clarification and concerns about the alternatives. In addition, to the public meetings, the park superintendent made one presentation during the public comment period to a civic organization.

The final EIS/GMP document responds to agency and public comments received on the draft document.

Dated: November 17, 2003.

James A. Loach,

Acting Regional Director.

[FR Doc. 04–134 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–DE–P

DEPARMENT OF THE INTERIOR

National Park Service

Notice of Intent To Conduct Restoration Planning, Regarding Point Reyes Tarball Incident, Marin County, California, Pursuant to 15 CFR 990.44

Incident: Oiling of birds and shoreline at and near Point Reyes National Seashore, November 16, 1997—February 20, 1998.

Agencies: The natural resources trustees (Trustees) for this Incident are the United States Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS); the U.S. Department of Commerce, acting through the National Oceanic and Atmospheric Administration (NOAA); and the State of California, acting through the California Department of Fish and Game's (CDFG) Office of Spill Prevention and Response (OSPR). DOI, NOAA, and the State of California are natural resource trustees pursuant to the National Contingency Plan, 40 CFR 330.600 and 300.605 and Executive Order 12777. The CDFG is the trustee for fish, wildlife, and their habitat pursuant to California Fish and Game Code Sections 711.7 and 1802 and a delegation from the Governor. The NPS is acting as the Federal Lead Administrative Trustee (FLAT).

Summary of Facts and Authority

Between November 16, 1997 and February 20, 1998 oil, in the form of many large tarballs, and approximately 2,900 oiled seabirds washed on to the beaches of Pt. Reyes National Seashore and other beaches to the north and south (the ''Incident''). State and federal agencies responded to this oil spill but a source of the oil was not identified at the time. Analyses of the oil suggested that it came from more than one vessel or other source.

After the Incident, the Trustees initiated a number of preassessment data collection activities. The data has been assembled and analyzed in a report titled, ''Impacts to Natural Resources from the Point Reyes Tarball Incident, 1997–1998: Final Report of NRD Initiation'', which discusses information concerning injuries to seabirds and to other natural resources.

Pursuant to section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. 2701 *et seq.*, federal and state trustees for natural resources are authorized to assess natural resource damages resulting from oil spills into navigable waters and to develop and implement a plan for restoration of such injured resources. The Natural Resource Damage Assessment Regulations under OPA, 15 CFR part 990 (the ''NRDA regulations''), provide that trustees are to prepare a Notice of Intent to Conduct Restoration Planning if they determine certain conditions have been met and if they decide to quantify the injuries to natural resources and to develop a plan to restore them.

This Notice is to announce, pursuant to § 990.44 of the NRDA regulations, that the Trustees, having collected and analyzed data, intend to proceed with restoration planning actions to address injuries to natural resources resulting from the Incident. The purpose of this restoration planning effort is to further evaluate injuries to natural resources and services and to use that information to determine the need for and type and scale of restoration actions.

Related Events

On November 23, 2001, oiled seabirds and tarballs began washing ashore primarily along the San Mateo County coastline. Chemical analyses of oiled bird feathers were conducted and compared to known oil samples in an attempt to identify the source of the oil. Analyses of oil from the feathers collected between November 25, 2001 and January 4, 2002 matched many of the historical samples taken from oiling events in the general San Francisco Bay area which had occurred in 1992–93, 1997–98 (this Incident), 1999, and February 2001, and for which a source had not previously been determined (often referred to as ''mystery spills'').

Subsequent to the 2001–02 oiling event, oil samples were obtained from a sunken vessel, the *S.S. Jacob Luckenbach*, which had been resting in 175 feet of water off the San Mateo coast since its sinking in 1954. These *Luckenbach* oil samples matched many of the oil samples from the Incident and

from the other mystery spills. These other mystery spills impacted similar species in the same area as the Incident. Consequently, the Trustees now consider all of these incidents to be related. While the injury assessment of these spills has been separate, the Trustees plan to prepare a single draft Restoration Plan to address the natural resource injuries from all of them.

Trustees' Determinations of Jurisdiction and to Conduct Restoration Planning

The Trustees have made the following determinations pursuant to 15 CFR 990.41 and 990.42.

1. Beginning on or about November 16, 1997, at Point Reyes National Seashore, Marin County, California, petroleum tarballs began washing ashore near Drakes Beach, Limantour Beach, Bolinas, and other beaches. These occurrences constituted an ''Incident'' within the meaning of 15 CFR 990.30. The Incident is also a spill or discharge as defined at California Government Code 8670.49

2. The Incident was not permitted under a permit issued under federal, state, or local law: was not from a public vessel; and was not from an offshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

3. Oil discharged during the Incident adversely affected marine habitats and seabirds. Consequently, natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

4. Response actions did not adequately address the injuries resulting from the Incident.

5. Feasible primary and/or compensatory restoration actions exist to address the resource injuries. The Trustees will be considering restoration projects that are feasible to implement, focusing on projects that benefit seabirds.

6. As a result of the foregoing determinations, the Trustees have concluded that there is jurisdiction to pursue restoration under the Federal Oil Pollution Act (OPA), 33 U.S.C. 2702 and 2706, and under California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code Sections 8670.1 *et seq.*

Administrative Record

The Trustees have opened an Administrative Record (Record) in compliance with 15 CFR 990.45. The Record includes documents relied upon by the Trustees during the assessment performed in conjunction with the incident.

A copy of the Record is located at the Gulf of the Farallones National Marine Sanctuary, Ft. Mason, Building 201, San Francisco, CA 94123. Arrangements may be made to review it by contacting Jan Roletto at that address or by calling her at 415–561–6622.

A copy of the Record is also located at California's Department of Fish & Game's Office of Spill Prevention and Response, 1700 K Street, Suite 250, Sacramento, CA 95814. Arrangements may be made to review it by contacting Dr. Steve Hampton at that address or by calling him at 916–323–4724.

Public Involvement

Pursuant to 15 CFR 990.14(d), the Trustees seek public involvement in restoration planning for this Incident through public review of, and comment on, documents contained in the Administrative Record, as well as on a draft Restoration Plan (''RP''), when it has been prepared. The Trustees presently intend to prepare, and seek public comment on, a comprehensive draft RP which addresses the natural resource injuries resulting from this Incident, from the Luckenbach discharges, and from the other mystery spills described above.

Dated: October 2, 2003.

Michael A. Soukup,

Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 04–136 Filed 1–5–04; 8:45 am]

BILLING CODE 4312–FW–P

DEPARTMENT OF THE INTERIOR

National Park Service

Intent to Conduct Restoration Planning, S.S. Jacob Luckenbach, San Francisco, CA

AGENCIES: The National Park Service, the Fish and Wildlife Service, and the Bureau of Land Management, of U.S. Department of the Interior; National Oceanic and Atmospheric Administration, Department of Commerce; State of California Department of Fish and Game, Office of Spill Prevention and Response.

ACTION: Notice of intent to conduct restoration planning.

SUMMARY: Pursuant to section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. 2701 *et seq.*, designated Federal and State trustees for natural resources are authorized to assess natural resource damages resulting from oil spills into navigable waters and develop and implement a plan for restoration. The Federal and State trustees for natural resources for this incident include the United States Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (FWS) on behalf of the Bureau of Land Management (BLM) and the National Park Service (NPS); the U.S. Department of Commerce (DOC), acting through the National Oceanic and Atmospheric Administration (NOAA); and the California Department of Fish and Game (CDFG), acting through its Office of Spill Prevention and Response (OSPR) (hereafter collectively referred to as ''the natural resource trustees'' or ''the trustees''). Section 990.44 of the Natural Resource Damage Assessment (''NRDA'') Regulations under OPA, 15 CFR part 990, provides for the natural resource trustees to prepare a notice of intent to conduct restoration planning if certain requirements are met and they decide to proceed with a natural resource damage assessment.

Pursuant to section 990.44 of the OPA–NRDA Regulations, the natural resource trustees announce their intent to proceed with restoration planning actions to address injuries to natural resources along the central California coastal area caused by the chronic discharge of oil from the incident. The purpose of this restoration planning effort is to further evaluate injuries to natural resources and services and use that information to determine the need for and type and scale of restoration actions.

Since the incident, the trustees' have initiated a number of preassessment data collection activities. The data demonstrate that natural resource injuries to seabirds and wildlife, and other natural resources have occurred. The trustees have implemented or are developing studies to assess the extent of these injuries.

FOR FURTHER INFORMATION CONTACT: Jim Haas, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–2605, Sacramento, California 95825. (916) 414–9740.

SUPPLEMENTARY INFORMATION: On July 14, 1953, the *S.S. Jacob Luckenbach,* owned by the Luckenbach Steamship Company, sank as a result of a collision with the *S.S. Hawaiian Pilot,* owned by the Matson Navigation Company. The *Luckenbach* is a 468-foot freight ship that sank approximately 17 miles southwest of the Golden Gate Bridge. The vessel now rests in 175 feet of water in the Gulf of the Farallones National Marine Sanctuary.

On November 23, 2001, oiled seabirds and tarballs began washing ashore primarily along the San Mateo County coastline. The U.S. Coast Guard and California Department of Fish and Game

responded to the incident by implementing beach surveys to recover oiled birds and activating the oiled wildlife care network. Concurrently, chemical analyses of oiled feathers were conducted and compared to known oil samples in an attempt to identify the source of the oil. Samples of oil from feathers collected from November 25, 2001, through January 4, 2002, matched historical samples taken from similar mystery incidents in 1992–93, 1997–98 (also referred to as the Point Reyes tarball incident), 1999, and February 2001. Those samples were, in turn, matched to oil samples from the *S.S. Jacob Luckenbach.*

The U.S. Coast Guard's Marine Safety Office San Francisco Bay, the California Department of Fish and Game Office of Spill Prevention and Response (OSPR) and Titan Maritime, Inc. have completed oil removal operations from the *Luckenbach.* Several representatives from the trustee agencies formed a task force to advise the responders concerning the resources that were at risk from the proposed salvage operations.

The Federal trustees for this incident are the United States Department of the Interior (DOI), including the Bureau of Land Management (BLM), the National Park Service (NPS), and the U.S. Fish and Wildlife Service (FWS); the U.S. Department of Commerce (DOC), acting through the National Oceanic and Atmospheric Administration (NOAA). The Federal trustees are designated pursuant to the National Contingency Plan (40 CFR 300.600 and 300.605). The State trustee for this incident is the California Department of Fish and Game (CDFG) acting through its Office of Spill Prevention and Response (OSPR) under California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code sections 8670.1 *et seq.*

The U.S. Coast Guard National Pollution Funds Center (NPFC) approved a funding request submitted by the trustees to initiate natural resource damage assessment activities for the incident. The trustees' initiation activities focused on the elements necessary to make a determination to conduct restoration planning and establish an administrative record. In addition, ephemeral data collection was implemented to evaluate the completeness of beach survey forms and monitor post-breeding movements of the Santa Cruz Mountains population of the endangered marbled murrelet, a seabird that breeds in old growth forests along the Pacific coast. Because the trustees are still analyzing the results of these studies, the information is not yet available. However, the trustees have sufficient information to make a determination to conduct restoration planning.

Administrative Record: The trustees have opened an administrative record (record) in compliance with 15 CFR 990.45. The record will include documents relied upon by the trustees during the assessment performed in conjunction with the incident.

The record is located at California's Department of Fish & Games Office of Spill Prevention and Response, 1700 K Street, Suite 250, Sacramento, CA 95814. Arrangements may be made to review the record by contacting Dr. Steve Hampton at California's Department of Fish & Games Office of Spill Prevention and Response, 1700 K Street, Suite 250, Sacramento, CA 95814 or by calling him at 916–323–4724.

A copy of the record is also located at the Gulf of the Farallones National Marine Sanctuary, Ft. Mason, Building 201, San Francisco, CA 94123. Arrangements may be made to review it by contacting Jan Roletto at that address or by calling her at 415–561–6622.

Trustees' Determinations of Jurisdiction

The trustees have made the following determinations pursuant to 15 CFR 990.41 and 990.42.

1. Beginning on or about November 23, 2001, oiled sea birds began washing ashore primarily along the San Mateo County coastline. This occurrence resulted from the discharge of oil from the sunken vessel, the *S.S. Jacob Luckenbach.* This discharge was an incident as defined at 15 CFR 990.30. In addition, oil samples from the *Luckenbach* match oil samples collected during oil spill events in the San Francisco Bay area in 1992–93, 1997–98 (sometimes referred to as the Point Reyes tarball incident) and two smaller events in 1999 and 2001, and for which a source had not previously been identified.

2. The incident was not permitted under a permit issued under Federal, State, or local law: was not from a public vessel; and was not from an offshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651 *et seq.*

3. Oil discharged during the incident affected marine habitats, wildlife, and human uses in the area. Consequently, natural resources under the trusteeship of the trustees have been injured as a result of the incident.

4. As a result of the foregoing determinations, the trustees have jurisdiction to pursue restoration under the Federal Oil Pollution Act (OPA), 33 U.S.C. 2701–2761, and California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code sections 8670.1 *et seq.*

Trustees' Determination To Conduct Restoration Activities

For reasons discussed below, the trustees have made the determinations required by 15 CFR 990.42(a) and are proceeding with restoration planning to develop restoration alternatives that will restore, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of this incident.

1. Injuries have resulted from this incident. Data collected and analyzed pursuant to 15 CFR 990.43 demonstrate that injuries to natural resources are likely to have resulted from the incident, including, but not limited to sea birds and wildlife.

2. Response actions have not adequately addressed the injuries resulting from the incident. Although response actions were initiated promptly and conducted appropriately, the nature of discharge and the sensitivity of the environment precluded prevention of injuries to some natural resources.

3. Feasible primary and/or compensatory restoration actions exist to address the potential injuries. The trustees will be considering restoration projects that are feasible to implement. The trustees will be considering restoration projects that are feasible to implement, focusing on projects that benefit seabirds.

Based on the above findings, the trustees hereby determine that they have jurisdiction to pursue restoration pursuant to the Oil Pollution Act, 33 U.S.C. 2702 and 2706 and California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code sections 8670.1 *et seq.*

The public will be given an opportunity for public review and comment on documents contained in the administrative record and on the draft RP/EA when it has been prepared. The trustees intend to prepare, and seek public comment on, a comprehensive draft RP/EA which addresses the natural resource injuries resulting from this incident, from the Point Reyes tarball incident, and from the other mystery spills described above. The trustees will notify the public when the draft RP/EA is released.

Dated: October 30, 2003.

Abigal Miller,

Deputy Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 04–137 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, Maine; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, February 2, 2004.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held September 8, 2003
2. Committee reports:
   - –Land Conservation
   - –Park Use
   - –Science
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda for next Commission meeting, June 7, 2004

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, PO Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: November 25, 2003.

Sheridan Steele,

Superintendent, Acadia National Park.

[FR Doc. 04–138 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–2N–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Two Hundred Forty-Fifth; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on January 26, 2004.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, MA for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (November 24, 2003)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   - Zoning Update
   - Transportation
   - Hunting Program
   - Highlands Center
   - Eastham Town Beach
   - Prescribed Burns
   - Cape Corps
   - News from Washington
6. Old Business
7. New Business
   - Commercial Certificates of Suspension of Condemnation
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: December 8, 2003.

Maria Burks,

Superintendent.

[FR Doc. 04–135 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 13, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 21, 2004.

Patrick W. Andrus,

Acting, Keeper of the National Register of Historic Places.

ARIZONA

Yavapai County

West Prescott Historic District (Boundary Increase II), 617–621 Glenwood Ave., 330,334,340,344 and 348 Moreland Circle, Prescott, 03001449

ARKANSAS

Boone County

Barham, Elliott and Anna, House, 4085 West St., Zinc, 03001453

Bradley County

Mt. Olive Rosenwald School, Bradley Rd. 45, Mt. Olive, 03001454

Warren Post Office, 236 S. Main St. (US 63B), Warren, 03001460

Clark County

Arkansas 51, Old, Curtis to Gum Springs, (Arkansas Highway History and Architecture MPS) W of U.S. 67, starting approx. 0.5 mi. S of jct. of U.S. 67 and Curtis Cemetery Rd., and ending at the AR 26 and U.S. 67, Curtis, 03001457

Biscoe, Nannie Gresham, House, 227 Cherry St., Arkadelphia, 03001450

Rosedale Plantation Barn, 879 Old Military Rd., Arkadelphia, 03001451

Dallas County

Dallas County Training School High School Building, 934 Center St., Fordyce, 03001455

Lonoke County

St. Louis Southwest Railway (Cotton Belt Route) Depot, (Historic Railroad Depots of Arkansas MPS) Main St. (AR 31), Coy, 03001459

Miller County

Texarkana, Arkansas, Municipal Building, Walnut and third Sts., Texarkana, 03001456

US 67, Old, Mandeville, (Arkansas Highway History and Architecture MPS) AR 296, Miller Cty Rd. 138 and SE of current U.S. 67, Mandeville, 03001458

Randolph County

Cedar Grove School #81, (Public Schools in the Ozarks MPS) Brockett Community, aprrox. 5 mi. N of Pocahontas, AR 115, Pocahontas, 03001452

Searcy County

Tharp House, 15 North West Ave., Fayetteville, 03001461

ILLINOIS

Du Page County

Robinwood, 208 Arlington, Elmhurst, 03001463

Lake County

Jewel Tea Company, Ince, 511 Lake Zurich Rd., Barrington, 03001462

Sangamon County

Bolivia Road Bridge, Axross the North Fork of the Sangamon R., Bolivia, 03001464

KANSAS

Cloud County

Union Pacific Railroad Depot, (Railroad Resources of Kansas MPS) 300 Washington St., Concordia, 03001465

Douglas County

Vinland Fair Association Fairgrounds Exhibit Building, 1736 N. 700 Rd., Baldwin, 03001466

Marion County

Amelia Park Bridge, 0.5 mi. W of U.S. 77 on Cty Rd. 260th. Approx 1 mi. NE of Antelope, Antelope, 03001467

Osage County

Karnes Stone Barn, 4204 E. 129th St., Carbondale, 03001468

MASSACHUSETTS

Plymouth County

Hull Shore Drive, Nantasket Avenue, Metropolitan Park System of Greater Boston MPS, (Metropolitan Park System of Greater Boston MPS) Hull Shore Dr., Nantasket Ave., Hull, 03001470

Suffolk County

Winthrop Parkway, Metropolitan Parkway System of Greater Boston, (Metropolitan Park System of Greater Boston MPS) Winthrop Parkway, Revere, 03001471

Winthrop Shore Dr., Metropolitan Park System of Greater Boston, (Metropolitan Park System of Greater Boston MPS) Winthrop Shore Dr., Winthrop, 03001469

MISSOURI

Boone County

Ballenger Building, (Downtown Columbia, Missouri MPS) 27–29 South Ninth St., Columbia, 03001474

North Ninth Street Historic District, (Downtown Columbia, Missouri MPS) 5–36 North Ninth St., Columbia, 03001473

OREGON

Clackamas County

Reid's, Wilbur and Evelyn, Alderbrook Lodge, 16863 W. Rolling Riffle Ln., Boring, 03001477

Jackson County

Mountain House,1148 Old Highway 99 South,Ashland, 03001479

Josephine County

Schmidt, Claus and Hannchen, House, 508 SW 5th, Grants Pass, 03001478

Marion County

Champoeg Cemetery, Champoeg Cemetery Rd., Aurora, 03001475

Multnomah County

Portland Buddhist Church, 312 NW Tenth Ave., Portland, 03001476

Umatilla County

Columbia College, 722 S. Main St., Milton-Freewater, 03001481

UTAH

Davis County

Porter, Nathan T. and Anna, House, (Centreville MRA) 224 South 210 West, Centerville, 03001482

Salt Lake County

Riverton Historic District, Roughly 12300 S. Redwood Rd. to 12600 S. Redwood Rd., Riverton, 03001484

Summit County

Weeter, John C., House, (Mining Boom Era Houses TR) 843 Norfolk, Park City, 03001480

Utah County

Stewart—Hills House, (Orem, Utah MPS) 275 East 2000 South, Orem, 03001483

VIRGINIA

Portsmouth Independent City

Downtown Portsmouth Historic District, Roughly bounded by I–264, Middle St., Primrose St. and Queen St., Portsmouth (Independent City), 03001485

WISCONSIN

Milwaukee County

East Village Historic District, Generally bounded by North Humboldt, East Brady, North Warren and Milwaukee R, Milwaukee, 03001486

[FR Doc. 04–139 Filed 1–5–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 27, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 21, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Alamosa County

Medano Ranch Headquarters, 2.6 mi. N of 6N Ln., Mosca, 03001543

Trujillo Homestead, Unnamed two-track road, 9.3 mi. NE of MOsca, MOsca, 03001544

MICHIGAN

Alger County

Pickle Barrel House, NE corner Lake Ave. and Randolph St., Burt Township, 03001548

Chippewa County

Kinross Township Hall and School, 7305 W. Kinross Rd., Kinross Township, 03001549

Lenawee County

Saint Michael and All Angels' Episcopal Church and Cambridge Township Cemetery, 11646 Old Monroe Pike, Cambridge Township, 03001550

Wayne County

Lincoln Park Post Office, 1335 Southfield Rd., Lincoln Park, 03001551

NEW MEXICO

Hidalgo County Lordsburg—Hidalgo County Library, (New Deal in New Mexico MPS) 208 E. Third St., Lordsburg, 03001547

Sierra County

Tingley, Carrie, Hospital Historic District, (New Deal in New Mexico MPS) 992 Broadway, Truth or Consequences, 03001546

NORTH DAKOTA

Stutsman County

Brown, Stephen William, Stone House, 4829 75 R Ave., SE, Montpelier, 03001545

TEXAS

Wichita County

Depot Square Historic District, Roughly bounded by 8th St., Indiana St., 5th St. and MKT Railroad tracks, Wichita Falls, 03001552

[FR Doc. 04–140 Filed 1–5–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 20, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 21, 2004.

Patrick W. Andrus,

Acting Keeper of the National Register of Historic Places.

ARIZONA

Coconino County

Jordan Ranch, 735 Jordan Rd., Sedona, 03001489

ARKANSAS

Faulkner County

Military Road—Cadron Segment, (Cherokee Trail of Tears MPS) Address Restricted, Conway, 03001490

GEORGIA

Richmond County

Academy of Richmond county—1926 Campus, 910 Russell St., Augusta, 03001491

IOWA

Marshall County

Hultgren Farm, 17953 309th St., Akron, 03001536

Story County

Mulcahy Barn, 25623—710th Ave., Colo, 03001492

KANSAS

Brown County

Eicholtz, A.J., House, 406N. 7th St., Hiawatha, 03001493

Dickinson County

Wheatland Farm Historic District, 2291 2100 Ave., Chapman, 03001494

Ellis County

Justus Bissing, Jr. Historic District, 502–504 W. 12th St., Hays, 03001495

Ellsworth County

Wilson Downtown Historic District #1—Main St., Roughly along Main St., 24th St., 25th St., and 26th St., Wilson, 03001496

Wilson Downtown Historic District #3—Southside, 400 blk of 27th St. aka Old Highway 40, Wilson, 03001497

Marion County

Bichet School, District 34, 4.5 mi. E of Florence on U.S. 50 and 1/10 mi. N of Bluestem Rd., Florence, 03001498

Pottawatomie County

Pottawatomie County Fair Pavilion, East Ninth St., Onaga, 03001499

Trego County

Trego County Fairgrounds Exhibit Building, Tract 10–12–23, Trego County Fairgrounds, Wa Keeney, 03001500

MAINE

Cumberland County

Norton House Historic District, 241 and 243 Foreside Rd., Falmouth, 03001501

Hancock County

Higgins Barn, 256 Oak Hill Rd., Indian Point, 03001502

Penobscot County

East Eddington Public Hall, Airline Rd., 0.4 mi W of juct of ME 46 S, Eddington, 03001503

MISSOURI

Greene County

Kite, Robert B. and Vitae A., Apartment Building, 769–771 South Ave., Springfield, 03001504

Scott County

Scott County Courthouse, 131 S. Winchester St., Benton, 03001505

St. Louis Independent city Parrish, D.L., Laundry Company Building, 3100–28 Olive St., St. Louis (Independent City), 03001506

Thiebe—Stierlin Music Company Building, 1006 Olive St., St. Louis (Independent City), 03001507

NEVADA

Clark County

Clark Avenue Railroad Underpass, Jct. of Bonanza Rd. and Union Pacific Railroad Tracks, Las Vegas, 03001509

Washoe County

Alpha Tau Omega Fraternity House, 205 University Terrace, Reno, 03001508

Garvey, Luella, House, 589–599 California Ave., Reno, 03001510

NEW MEXICO

Otero County

Jackson House, 1700 Ninth St., Almagordo, 03001511

NEW YORK

Albany County

Fine Arts and Flower Building Altamont Fairground, Altamont Fairgrounds, vic. of Grand St., Village of Altamont, 03001518

Dutchess County

DuBois, Peter C., House, 36 Slocum Rd., Beacon, 03001512

Essex County

Wellscroft, 158 NY 9N, Upper Jay, 03001513

New York County

French, Fred F., Building, 551 Fifth Ave., New York, 03001514

General Electric Building, 570 Lexington Ave., New York, 03001515

Orange County

St. Mark's Baptist Church, 213 Main St., Village of Highland Falls, 03001516

Rensselaer County

St. Barnabas Epicopal Church, 2900 Fifth Ave., Troy, 03001517

Westchester County

Mott Mill, 11–23 St. Casimir Ave., Yonkers, 03001519

Stonecrest, 703 Croton Lake Rd., Bedford Corners, 03001520

RHODE ISLAND

Providence County

Perkins Buildings, 85 Sprague St., 101 and 102 Westfield St., Providence, 03001521

SOUTH DAKOTA

Clay County

First Methodist Episcopal Church, 14–16 North Dakota St., Vermillion, 03001522

Garfield Township Hall, 16667 306th St., Beresford, 03001523

Custer County

Garlock Building, 522 Mount Rushmore Rd., Custer, 03001524

Fall River County

Log Cabin Tourist Camp, SD 1, Hot Springs, 03001525

Lake County

Hegdahl, Abraham, Farm, (Federal Relief Construction in South Dakota MPS) 22808 U.S. 81, Madison, 03001526

McCook County

Downtown Salem Historic District, 140,200 and 201 N. Main, Salem, 03001527

Minnehaha County

Parmley—Pankow House, 613 S. Main, Sioux Falls, 03001528

Sherman Historic District, Roughly bounded by W. 18th St. to W. 22nd St., and S.

Dakota Ave. to S. Main St., Sioux Falls, 03001529
Stock Yards State Bank and Tri-State Wholesale Grocery Co., 201/207/211 N. Weber Ave., Sioux Falls, 03001530

Pennington County

Civilian Conservation Corp Camp F–10, (Federal Relief Construction in South Dakota MPS) 13381 Silver Mountain Rd., Rapid City, 03001531
Nichols Funeral Home Building, 832 St. Joseph, Rapid City, 03001532

Tripp County

Manthey Barn, 31952 289th St., Colome, 03001533

Turner County

Gunderson, Tenus Isaac, House, 1041 Washington, Genterville, 03001534
Wek Farmstead, 44227 288th St., Freeman, 03001535

Yankton County

New Hope Farm Polygonal Barn, (South Dakota's Round and Polygonal Barns and Pavilions MPS) 30725 444th Ave., Mission Hill, 03001537
New Hope Farm Swine Barn, 30725 444th Ave., Mission Hill, 03001538
Steigrube Place, (Northern and Central Townships of Yankton MRA) 30089 452nd Ave., Wakonda, 03001539

TEXAS

Lampasas County

Lampasas Downtown Historic District, Roughly bounded by Second St., Pecan St., Fourth St. and Chestnut St., Lampasas, 03001540

VERMONT

Windsor County

Congregational Church of Ludlow, (Religious Buildings, Sites and Structures in Vermont MPS) 48 Pleasant St., Ludlow, 03001541

WISCONSIN

Dunn County

Colfax Municipal Building, 613 Main St., Colfax, 03001542

[FR Doc. 04–141 Filed 1–5–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY. These human remains and associated funerary objects were removed from the Pueblo of San Cristóbal, Santa Fe County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; and Pueblo of Santo Domingo, New Mexico.

In 1912, human remains representing a minimum of 72 individuals were removed from the Pueblo of San Cristóbal, Santa Fe County, NM, by Nels C. Nelson on behalf of the American Museum of Natural History. No known individuals were identified. The one associated funerary object is a corrugated ceramic pot.

In 1923, human remains representing a minimum of 263 individuals were removed from the Pueblo of San Cristóbal, Santa Fe County, NM, by Louis R. Sullivan on behalf of the American Museum of Natural History. No known individuals were identified. The four associated funerary objects are one bone pipe, one ceramic pipe, and two bone implements.

The human remains have been identified as Native American based on their origin at the Pueblo of San Cristóbal. Geographic and documentary information indicates that these human remains were obtained from the postcontact territory of the Tano. Consultation with representatives of the Hopi Tribe of Arizona and Hopi oral tradition indicate that the Tano were invited to settle at First Mesa. Spanish documents indicate that the residents of the Pueblo of San Cristóbal fled their home shortly after the Pueblo Revolt in 1680 and eventually established a new village among the Hopi. Descendants of these immigrants are members of the Hopi Tribe of Arizona.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 335 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the five objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5846, before February 5, 2004. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; and Pueblo of Santo Domingo, New Mexico that this notice has been published.

Dated: November 7, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–147 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Carlsbad Caverns National Park, Carlsbad, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of the Interior, National Park Service, Carlsbad Caverns National Park, Carlsbad, NM. The human remains

were removed from locations near the entrance to Carlsbad Cavern in Eddy County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003. The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains.

A detailed assessment of the human remains was made by Carlsbad Caverns National Park professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1928, human remains representing a minimum of one individual were removed by National Park Service staff under unknown circumstances and without scientific documentation from an unspecified location near the entrance to Carlsbad Cavern in Eddy County, NM. No known individual was identified. No associated funerary objects are present.

In 1949 and 1951, human remains representing a minimum of two individuals were recovered by National Park Service staff under unknown circumstances and without scientific documentation from another unspecified location near the entrance to Carlsbad Cavern in Eddy County, NM. No known individuals were identified. No associated funerary objects are present.

Archeological investigation in the immediate vicinity of the entrance to Carlsbad Cavern has been limited. Several ring middens are located within 250 meters of the two sites. One of the ring middens was tested in 1994 and yielded brownware sherds, triangular-type projectile points, and radiocarbon dates of A.D. 960–1410. Pictographs near the discovery site have been attributed to several time periods, including the Archaic, and to several cultural groups, including Jumano and Apache.

Officials of Carlsbad Caverns National Park have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of Carlsbad Caverns National Park also have determined that the human remains described in this notice cannot be affiliated with an Indian tribe according to the definition of cultural affiliation at 25 U.S.C. 3001 (2), and are considered culturally unidentifiable.

According to the Native American Graves Protection and Repatriation Review Committee's charter, the Review Committee is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In December 1998, Carlsbad Caverns National Park requested that the Review Committee recommend repatriation of the three culturally unidentifiable human remains to a group of 12 Indian tribes that had requested the human remains and that demonstrated a cultural relationship to the region. The Review Committee considered the proposal at its December 1998 meeting in Santa Fe, NM, and recommended repatriation of the human remains to the 12 Indian tribes. A May 25, 1999, letter from the Departmental Consulting Archeologist on behalf of the chair of the Review Committee to the superintendent of Carlsbad Caverns National Park summarized the Review Committee's consideration of the park's request and transmitted the Review Committee's recommendation that the park repatriate the human remains to the group of 12 Indian tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Mary Gibson Scott, Superintendent, Carlsbad Caverns National Park, 3225 National Parks Highway, Carlsbad, NM 88220, telephone (505) 785–3020, before February 5, 2004. Repatriation of the human remains to the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

Carlsbad Caverns National Park is responsible for notifying the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–146 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF INTERIOR

National Park Service

Notice of Intent to Repatriate: Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001. The unassociated funerary objects were removed from the Alston Place site (22LE014), Lee County, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

In 1937, 12,510 unassociated funerary objects were removed during excavations at the Alston Place site (22LE014), Lee County, MS, by Moreau B. Chambers. Mr. Chambers donated the unassociated funerary objects to the Louisiana State University Museum of Natural Science the same year. The unassociated funerary objects are European glass beads.

The Alston Place site is a fortified habitation site and cemetery. Archeological evidence dates the latest occupation of the settlement to the 18th century. The Alston Place site has been

identified both as a Chickasaw village, and as the Natchez village of Falatchao that was occupied after the Natchez fled their lands following defeat by the French in 1729.

The Chickasaw Nation of Oklahoma is descended from the earlier, historically recognized Chickasaw Tribe. The Chitimacha Tribe of Louisiana is the only federally recognized tribe that shares cultural attributes with the late prehistoric Delta-Natchezan cultural complex from which both the historically known Natchez and Chitimacha tribes are descended. On the basis of linguistic and sociocultural evidence, the Chitimacha Tribe of Louisiana is considered to be the most closely related of the federally recognized Native American groups to the historic Natchez.

Officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(B), the 12,510 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Chickasaw Nation of Oklahoma and the Chitimacha Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the Chickasaw Nation of Oklahoma and the Chitimacha Tribe of Louisiana should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before February 5, 2004. Repatriation of the unassociated funerary objects to the Chickasaw Nation of Oklahoma and the Chitimacha Tribe of Louisiana may proceed after that date if no additional claimants come forward.

The Louisiana State University Museum of Natural Science is responsible for notifying the Chickasaw Nation of Oklahoma and the Chitimacha Tribe of Louisiana that this notice has been published.

Dated: November 13, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–142 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Minnesota Indian Affairs Council, Bemidji, MN, and U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council, Bemidji, MN, and in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains and associated funerary objects were removed from sites in Cass and Beltrami Counties, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Minnesota Indian Affairs Council professional staff in consultation with representatives of the Flandreau Santee Sioux Tribe of South Dakota; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; and Upper Sioux Community, Minnesota.

During the late 19th century, human remains representing one individual were removed by T.H. Lewis from site 21–BL–18, Beltrami County, MN. The human remains were subsequently acquired by a Reverend Mitchell and donated to the Minnesota Historical Society in 1905. No known individual was identified. No associated funerary objects are present.

In 1934, human remains representing a minimum of four individuals were removed by L.A. Wilford from the Mud Lake Mounds site (21–CA–2), Cass County, MN. No known individuals were identified. The three associated funerary objects are two Blackduck Culture pottery sherds and one animal bone.

Before 1938, human remains representing one individual were removed by Louis Kruschle from the shore of Leech Lake, Cass County, MN. The human remains were subsequently acquired by William Schlecht and donated to the University of Minnesota in 1938. No known individual was identified. No associated funerary objects are present.

In 1958, human remains representing one individual were recovered by T.V. Grandy at the Episcopal Mission site (21–BL–8/9), Beltrami County, MN. No known individual was identified. No associated funerary objects are present.

In 1987, the human remains and associated funerary objects described above were transferred to the Minnesota Indian Affairs Council pursuant to provisions of Minnesota statute 307.08.

Archeological evidence indicates that the human remains and associated funerary objects are representative of the Woodland Tradition, a broad archeological classification that in northern Minnesota is related to present-day Siouan tribes. The Mud Lake Mound site (21–CA–2), sites 21–BL–8/9 and 21–BL–18, and the shores of Leech Lake are all located on land held in trust by the United States for the Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota.

Officials of the Minnesota Indians Affairs Council and Bureau of Indian Affairs have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of seven individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council and Bureau of Indian Affairs also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council and Bureau of Indian Affairs have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native

American human remains and associated funerary objects and the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; and Upper Sioux Community, Minnesota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Joseph Day, Minnesota Indian Affairs Council, 3801 Bemidji Avenue, Bemidji, MN 56601, telephone (218) 755–3825, before February 5, 2004. Repatriation of the human remains and associated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Tribe of the Santee Reservation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; and Upper Sioux Community, Minnesota may proceed after that date if no additional claimants come forward.

The Minnesota Indian Affairs Council is responsible for notifying the Flandreau Santee Sioux Tribe of South Dakota; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation, South Dakota; and Upper Sioux Community, Minnesota that this notice has been published.

Dated: November 25, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–148 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains and associated funerary objects were removed from New York and Pennsylvania.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the number of associated funerary objects reported in a notice of inventory completion published in the **Federal Register** on October 5, 2001 (FR Doc. 01–24963, pages 51060–62). A review of museum records resulted in the identification of eight additional associated funerary objects from the Silverheels site in Brant, NY, and 50 associated funerary objects from a site located between the Susquehanna and Chemung Rivers in Athens, PA.

Paragraphs 12 and 13 of the October 5, 2001, notice are corrected by substituting the following two paragraphs:

In 1903, human remains representing 122 individuals were recovered from Brant, NY, during a Peabody Museum of Archaeology and Ethnology expedition led by M.R. Harrington and A.C. Parker. No known individuals were identified. The 1,486 associated funerary objects include charred corn and acorns; potter's stones, polishing stones, nutting stones and other worked stones; broken celts; flaked chert and debitage; a piece of chipped quartz or red jasper; ceramic sherds, vessels and pipes; iron knives, scissors, awls, and an axe; pigment; glass, shell, catlinite, copper, and brass beads; bracelets of copper and brass beads; bracelets of iron, brass, and wire; brass jingles, brass earrings, and a brass point; sheet brass; broken and charred wooden objects; shells; animal bones, hide and teeth, including fish teeth; worked turtle shell, fragments that are probably part of a rattle, and small pebbles from a rattle; bone tubes and an awl; antler arrow flakers; charcoal; bark; an organic concretion; fragments of a brass bracelet; wood fragments; a ceramic pipe elbow; buckskin fragments with glass beads; leather fragments with glass beads; and a brass spoon fragment.

Museum records indicate that the human remains and associated funerary objects were recovered from the Silverheels site. This site is located within the town of Brant, 1.5 miles east of the village of Irving, on the Cattaraugus Indian Reservation, approximately 2.5 miles upstream of Lake Erie on Cattaraugus Creek. The interments most likely date to the Contact period (A.D. 1500–1700). Artifacts recovered from the site which support this date include iron and early colonial artifacts, Levanna- and Madison-style projectile points; ceramic vessels with globular bodies, constricted, zoned incised necks, and castellated rims; and a variety of terra cotta pipes, including pipes with trumpet-shaped bowls and bowls with representations of human faces and animals. In addition, multivariate attribute analysis of the ceramic artifacts indicates that the site dates to the early 17th century. In addition to the 1,486 associated funerary objects, a projectile point embedded in a vertebra of an individual is included for repatriation in this notice, although not specifically required under NAGPRA.

Paragraphs 20 and 21 of the October 5, 2001, notice are corrected by substituting the following two paragraphs:

In 1921, human remains representing two individuals were recovered from Athens, PA, during a Peabody Museum of Archaeology and Ethnology expedition led by Paul F. Scott. No known individuals were identified. The 50 associated funerary objects are sherds from a single vessel.

Museum documentation indicates that the site was discovered by workmen digging a gas pipeline trench in Athens. The site is described as located in the narrowest portion of land between the Susquehanna and Chemung Rivers. The interment most likely dates to the Late Woodland period (A.D. 1000–1600). Ceramic fragments recovered from the site include body sherds with a smooth finish and a collar

with a zoned, linear punctate design. The fragments likely represent an Owasco Corded Collar, dating to the early Late Woodland period (A.D. 1000–1300).

Paragraphs 29 and 30 of the October 5, 2001, notice are corrected by substituting the following three paragraphs:

Officials at the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 197 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 2,402 associated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials at the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Indians of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before February 5, 2004. Repatriation of the human remains and associated funerary objects to the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Indians of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Indians of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York that this notice has been published.

Dated: November 17, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–145 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the number of unassociated funerary objects reported in a notice of intent to repatriate published in the **Federal Register** on October 5, 2001 (FR Doc. 01–24965, pages 51064–65). A review of museum records resulted in the identification of two additional unassociated funerary objects from the Silverheels site in Brant, NY.

Paragraph 3 of the October 5, 2001, notice is corrected by substituting the following paragraph:

The 626 cultural items are ceramic sherds and vessels; projectile points, flaked chert tools and debitage; gun flint; notched stone; shell objects; a bone awl and disc; drilled bear and beaver teeth; shell, glass, copper, and stone beads; a copper tinkler; a brass ring; metal ornaments; an iron axe; pendants; an antler doll; red ochre; paint stones; and stone, wooden, and ceramic pipes.

Paragraph 12 of the October 5, 2001, notice is corrected by substituting the following paragraph:

In 1903, 210 cultural items were recovered from the Silverheels site in Brant, NY, during a Peabody Museum of Archaeology and Ethnology expedition led by M.R. Harrington and A.C. Parker. The objects include ceramic sherds and vessels; cherts points and flakes; glass, copper, and catlinite beads; an animal skin fragment; shell objects; an antler doll; raccoon bacula; red ochre; paint stones; a ceramic rim sherd; and a ceramic jar.

Paragraphs 19 and 20 of the October 5, 2001, notice are corrected by substituting the following three paragraphs:

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 3(B), the 626 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials at the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Indians of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before February 5, 2004. Repatriation of the unassociated funerary objects to the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Indians of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York,

and Tuscarora Nation of New York may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cayuga Nation of New York, Oneida Nation of New York, Oneida Tribe of Indians of Wisconsin, Onondaga Nation of New York, St. Regis Band of Mohawk Indians of New York, Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, Tonawanda Band of Seneca Indians of New York, and Tuscarora Nation of New York that this notice has been published.

Dated: November 17, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–143 Filed 1–5–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities Under Review: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Title III of the Americans with Disabilities Act, certification of State and local government accessibility requirements.

The Department of Justice, Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 8, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Wodatch (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Title III of the Americans with Disabilities Act, Certification of State and Local Government Accessibility Requirements.

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* State or local government. Under title III of the Americans with Disabilities Act, on the application of a State or local government, the Assistant Attorney General for Civil Rights (or his or her designee) may certify that a State or local building code or similar ordinance that establishes accessibility requirements (Code) meets or exceeds the minimum requirements of the ADA for accessibility and usability of ''places of public accommodation'' and ''commercial facilities.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10 respondents per year at 64 hours per certification.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 320 hours annual burden.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–170 Filed 1–5–04; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities Under Review; Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Title II of the Americans with Disabilities Act of 1990/section 504 of the Rehabilitation Act of 1973 discrimination complaint form.

The Department of Justice, Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 8, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this

notice, especially regarding the estimated public burden and associated response time should be directed to John Wodatch. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Title II of the Americans with Disabilities Act/section 504 of the Rehabilitation Act of 1973 discrimination complaint form.

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 respondents per year at 0.75 hours per complaint form.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,750 hours annual burden.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–171 Filed 1–5–04; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities Under Review: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Nondiscrimination on the basis of disability in State and local government services (self-evaluation).

The Department of Justice, Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 8, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the extension of a currently approved collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Wodatch (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Nondiscrimination on the Basis of Disability in State and Local Government Services (Self-Evaluation).

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* State, local or tribal government. Under title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is anticipated that 10,000 respondents will respond at 6 hours per self-evaluation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total public burden is 60,000 hours associated with this information collection.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–172 Filed 1–5–04; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities Under Review: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Nondiscrimination on the basis of disability in State and local government services (transition plan).

The Department of Justice, Civil Rights Division, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 8, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the extension of a currently approved collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to John Wodatch. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact John Wodatch, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or write him at U.S. Department of Justice, Civil Rights Division, Disability Rights Section NYA, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

The information collection is listed below:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

(3) *The agency form number and applicable component of the Department sponsoring the collection:* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* State, local or tribal government. Under title II of the Americans with Disabilities Act, State and local governments are required to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities (''program accessibility''). If structural changes to existing facilities are necessary to accomplish program accessibility, a public entity that employs 50 or more persons must develop a ''transition plan'' setting forth the steps necessary to complete the structural changes. A copy of the transition plan must be made available for public inspection.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is anticipated that 4,000 respondents will complete the transition plan within 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 32,000 hours annual burden.

If additional information is required contact: Ms. Brenda Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–173 Filed 1–5–04; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission of OMB Review; Comment Request

December 19, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: OSHA Data Initiative (ODI).

OMB Number: 1218–0209.

Affected Public: Business or other for-profit; Farms; and State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Annually.

Number of Respondents: 96,675.

Number of Annual Responses: 96,675.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 15,479.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: In accordance with 29 CFR 1904.41, OSHA is proposing to continue collecting occupational injury and illness data. These data allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing series safety and health problems. This data collection initiative is critical to OSHA's outreach and enforcement efforts and the data requirements tied to the Government Performance and Results Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–153 Filed 1–5–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 18, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of the Chief Financial Officer.

Type of Review: Extension of a currently approved collection.

Title: Disclosure of Information to Credit Reporting Agencies; Administrative Offset, Interest, Penalties, and Administrative Costs.

OMB Number: 1225–0030.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; and Farms.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 3,500.

Number of Annual Responses: 7,000.

Estimated Time Per Response: 1.75 hours.

Total Burden Hours: 12,250.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), and the Federal Claims Collections Standards, as implemented in the Department of Labor by 29 CFR part 20, require Federal agencies to afford debtors the opportunity to exercise certain rights before the agency reports a debt to a credit bureau or makes an administrative offset. In the exercise of these rights, the debtor may be asked to provide a written explanation of the basis for disputing the amount of existence of a debt alleged owned the agency. A debtor may also be required to provide asset, income, liability, or other information necessary for the agency to determine the debtor's ability to repay the debt, including any interest, penalties and administrative costs assessed.

Information provided by the debtor will be evaluated by the agency official responsible for collection of the debt in order to reconsider his/her initial decision with regard to the existence or amount of the debt. Information concerning the debtor's assets, income, liabilities, etc., will be used by the agency official responsible for collection of the debt to determine whether the agency's action with regard to administrative offset or the assessment of interest, administrative costs or penalties would create undue financial hardship for the debtor, or to determine whether the agency should accept the debtor's proposed repayment schedule.

If a debtor disputes or asks for reconsideration of the agency's determination concerning the debt, the debtor will be required to provide the information or documentation necessary to state his/her case. Presumably, the agency's initial determination would not change without the submission of new information.

Information such as the debtor's assets, income, and liabilities would typically not be available to the agency unless submitted by the debtor.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 04–154 Filed 1–5–04; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 23, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316 (this is not a toll-free number), within

30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Job Corps Application Data.

OMB Number: 1205–0025.

Affected Public: Individuals or households; State, Local, or Tribal Government; Business or other for-profit; and Not-for-profit institutions.

Type of Response: Reporting and Recordkeeping.

Frequency: On occasion.

Number of Respondents: 102,833.

Annual Responses: 107,719.

Form	Number of respondents	Average response time	Burden hours
Job Corps Application—ETA 652	102,833	10 minutes	17,139
Statement from Court—ETA 655	102,833	1 minute	1,714
Child Care Certification—ETA 682	4,886	30 seconds	41
Total			18,894

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Data previously collected on the following Job Corps application forms are now being collected from data input screens that electronically transmit data to a Center Information System (CIS). Job Corps has continued to collect application data because it was necessary to the application process that youth receiving training on Job Corps centers be eligible for the benefits provided.

Job Corps has now implemented electronic collection of data during the Job Corps application process and the changes required by the Workforce Investment Act have been incorporated in the collection. We request that the following data used in the application process be extended under OMB 1205–0025:

ETA 652, Job Corps Data Sheet,

ETA 655, Statement from Court or Other Agency, and ETA 682, Child Care Certification.

The automation of these forms will result in a reduction in paperwork burden hours and a streamlined electronic application.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Senior Community Service Employment Program (SCSEP).

OMB Number: 1205–0040.

Affected Public: Not-for-profit institutions and State, Local, or Tribal Government.

Type of Response: Reporting and Third party disclosure.

Frequency: Quarterly and Annually.

Collection of information	Number of respondents	Frequency	Annual responses	Average response time (hours)	Annual burden hours
Quarterly Program Report, ETA–5140.	69	Quarterly	276	8	2,208
Equitable Distribution Report, ETA–8705.	56	Annually	56	12	672
Poster	69	On occasion	69	0.0	0
Financial Status Report, SF–269	69	Quarterly and Final	345	0.50	172
Grant Planning and Application, Application for Federal Domestic Assistance, SF–424, SF–424A/B.	69	Annually	69	40	2,760
Total			815		5,812

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: This collection of program and financial information continues to be needed to assure that the requirements of Title V of the Older Americans Act are met. The extension of these forms will allow coverage while the new reporting system and performance measures are developed.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Investigative Data Collection Requirements for the Trade Act of 1974 as amended by the Trade Act of 2002.

OMB Number: 1205–0342.

Affected Public: Individuals or households; Business or other for-profit; and State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 4,100.

Annual Responses: 4,100.

Information collection	Number of respondents	Average response time (hours)	Burden hours
ETA 9042a—Petition	4,100	0.33	1,367
ETA 9042a—State Review	4,100	0.08	342
ETA 9043a	4,100	3.50	14,350
ETA 8562a	6,560	1.78	11,677
ETA 9018	75	3.00	225
Total			27,961

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: ETA Form 9042a, Petition for Trade Adjustment Assistance, and its Spanish translation, ETA Form 9042a–1, Solicitud De Asistencia Para Ajuste, establish a format that may be used for petitioning for a certification of eligibility to apply for worker adjustment assistance. The form is necessary to ensure an orderly application process and timely processing of petitions in accordance with section 221(a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002. The ETA 9043a Business Confidential Data Request, ETA 8562a Customer Survey, and ETA 9018 Oil and Gas Drilling and Exploration Oilfield Services are undertaken in accordance with sections 222, 223 and 249 of the Trade Act of 1974, as amended by the Trade Act of 2002, which require the Secretary of Labor to certify groups of workers as eligible to apply for worker trade adjustment assistance.

The Department is requesting to consolidate multiple collections of information under one OMB control number (OMB No. 1205–0342). The collections of information, forms and currently assigned OMB control numbers are listed below:

Collection title	Form	OMB No.
Investigative Data Collection Requirements for the Trade Act of 1974 as amended by the Trade Act of 2002 (Formerly, Petition for Trade Adjustment Assistance).	ETA 9042a	1205–0342
Business Confidential Data Request and NAFTA Transitional Adjustment Assistance Confidential Data Request.	ETA 9043a	1205–0339
Customer Survey and TAA Customer Survey	ETA 8562a	1205–0190
Oil and Gas Drilling and Exploration Oilfield Services	ETA 9018	1205–0272
Request for Determination of Eligibility to Apply for the Alternative Trade Adjustment Assistance for Older Workers.	N/A	1205–0442

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–155 Filed 1–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Ergonomics; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: The National Advisory Committee on Ergonomics (NACE) is part of the Secretary's comprehensive approach for reducing ergonomics-related injuries and illnesses in the workplace. The committee was convened for the first time on January 22, 2003. This notice schedules the fourth NACE meeting. During the first day of the meeting, the committee will hear presentations at a research symposium entitled ''Musculoskeletal and Neurovascular Disorders—The State of Research Regarding Workplace Etiology and Prevention.'' The public is encouraged to attend the symposium and the meeting.

DATES: The committee will meet from 8 a.m. until 5 p.m. on Tuesday and Wednesday, January 27 and 28, 2004.

ADDRESSES: The committee will meet at the Hotel Washington, 15th and Pennsylvania Avenue, NW., Washington, DC 20004; Telephone: (202) 638–5900. Submit comments, views, or statements in response to this notice to MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, OSHA, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2144; Fax: (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION: NACE was chartered for a two-year term on November 27, 2002, to provide advice and recommendations on ergonomic guidelines, research, and outreach and assistance. The committee has met on January 22, 2003, and May 6–7, 2003, in Washington, DC, and on September 23–24, 2003 in Arlington, VA. This notice announces the fourth meeting of the committee, which will take place in Washington, DC, on January 27–28, 2004.

A research symposium will take place in conjunction with the first day of the January 27–28, 2004 NACE meeting. On October 6, 2003 (68 FR 57713), OSHA published a notice soliciting abstracts for this symposium. Abstracts were originally due on November 5. In a subsequent notice published on November 7, 2003 (68 FR 63133), OSHA extended the period in which to submit abstracts until December 1, 2003. NACE will use proceedings from the symposium to make recommendations to advance OSHA's agenda of reducing the incidence of Musculoskeletal Disorders (MSDs) in the workplace.

I. Meeting Agenda

On January 27, 2004, a one-day symposium entitled Musculoskeletal and Neurovascular Disorders—The State of Research Regarding Workplace Etiology and Prevention will be held in

conjunction with the first day of the NACE meeting.

The committee will hear presentations from three panels of researchers on etiology and intervention. Following these panel presentations, the committee will have the opportunity to ask questions on the presentations and discuss relevant issues raised by the presentations. The panel presentations and discussions will be facilitated by John Howard, M.D., Director, National Institute for Occupational Safety and Health. On Wednesday, January 28, the committee will hear presentations on the diagnosis of carpal tunnel syndrome and also presentations on the advantages of a good ergonomics program. Following these presentations, the committee's working groups on Research, Guidelines, and Outreach and Assistance will meet. The working groups will report back to the full committee that afternoon and lead discussions about their respective topics.

II. Public Participation

Written data, views, or comments for consideration by NACE on the various agenda items listed above may be submitted, preferably with copies for the NACE members, to MaryAnn Garrahan at the address listed above. Submissions received by January 20, 2004, will be provided to the committee members for consideration. Requests to make oral presentations to the committee may be granted if time permits. Anyone wishing to make an oral presentation to the committee should notify MaryAnn Garrahan at the address noted above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request an oral presentation may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory committee.

Persons with disabilities requiring special accommodations should contact Veneta Chatmon (Phone: (202) 693–1912; Fax (202) 693–1635 by January 9, 2004.

A transcript of the meeting will be available for inspection and copying in the OSHA Technical Data Center, Room N–2625 (*see* **ADDRESSES** section above) Phone: (202) 693–2350. Transcripts of NACE meetings will also be available online on OSHA's Web site at *http://www.osha.gov/SLTC/ergonomics/nat_advis_comm.html.*

Authority: This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), GSA's FACA Regulations (41 CFR part 102–3), and DLMS 3 Chapter 1600.

Signed at Washington, DC this 29th day of December, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 04–156 Filed 1–5–04; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2004–1 CARP DTRA4]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of voluntary negotiation period.

SUMMARY: The Copyright Office is announcing the initiation of the voluntary negotiation period for determining reasonable rates and terms for two compulsory licenses, which in one case, allows public performances of sound recordings by means of eligible nonsubscription transmissions, and in the second instance, allows the making of an ephemeral phonorecord of a sound recording in furtherance of making a permitted public performance of the sound recording for the period beginning January 1, 2005 and ending on December 31, 2006.

EFFECTIVE DATE: The voluntary negotiation period begins on January 6, 2004.

ADDRESSES: Copies of voluntary license agreements and petitions, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered by a commercial, non-government courier or messenger, they must be delivered to: The Congressional Courier Acceptance Site, located at 2nd and D Streets, NE., between 8:30 a.m. and 4 p.m. If hand delivered by a party, copies of voluntary license agreements and petitions should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Senior Attorney, Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''), Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt, noninteractive, digital subscription transmissions. 17 U.S.C. 114(f).

The scope of this license was expanded in 1998 upon passage of the Digital Millennium Copyright Act of 1998 (''DMCA'' or ''Act''), Public Law 105–304, in order to allow for the public performance of a sound recording when made in accordance with the terms and rates of the statutory license, 17 U.S.C. 114(a), by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission.

An ''eligible nonsubscription transmission'' is a noninteractive, digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. A ''preexisting satellite digital audio radio service'' is a subscription digital audio radio service that received a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998. *See* 17 U.S.C. 114(j)(6) and (10).

In addition to expanding the current § 114 license, the DMCA also created a new statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). The new statutory license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in § 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for purposes of a later transmission. The new license also provides a means by which a transmitting entity with a statutory license under § 114(f) can make more than the one phonorecord permitted by the exemption specified in § 112(a). 17 U.S.C. 112(e).

Determination of Reasonable Terms and Rates

The statutory scheme for establishing reasonable terms and rates is the same for both licenses. Terms and rates may

be determined by voluntary agreement among the affected parties, or if necessary, through compulsory arbitration conducted pursuant to Chapter 8 of the Copyright Act. Rates and terms are set for a two-year period through this process, unless a different period is otherwise agreed upon by the parties as part of a negotiated agreement.

Parties may submit such an agreement to the Copyright Office and request that the Office publish the proposed rates and terms in the **Federal Register** for comment from the public. If no party with a substantial interest and an intent to participate in an arbitration proceeding files a comment opposing the negotiated rates and terms, the Librarian may adopt the proposed terms and rates without convening a copyright arbitration royalty panel. 37 CFR 251.63(b). On the other hand, if the affected parties are unable to reach an industry-wide agreement, or only certain parties negotiate private license agreements, then rates and terms for the statutory licenses are established through the arbitration process.

The arbitration process begins when an interested party files a petition with the Librarian of Congress during the 60-day period specified by the statute and requests that the rates be set through the CARP process. The petition must be filed by a party with a significant interest in the outcome of the proceeding and it must identify ''the extent to which the petitioner's interest is shared by other owners or users.'' 17 CFR 251.62(a). For both the section 112 and section 114 licenses, the period for filing a petition to set rates and terms for the 2005 and 2006 license period shall begin on July 1, 2004. 17 U.S.C. 112(e)(6) and 114(f)(2)(C)(ii)(II).

Initiation of Voluntary Negotiations

Unless the schedule for setting terms and rates has been readjusted by the parties in a previous rate adjustment proceeding, §§ 112(e)(6) and 114(f)(2)(C)(i)(II) of the Copyright Act require the publication of a notice in January 2000, and at 2-year intervals thereafter, initiating the voluntary negotiation periods for determining reasonable rates and terms for the statutory licenses permitting the public performance of a sound recording by means of certain digital transmissions and the making of an ephemeral recording in accordance with § 112(e). *See* 65 FR 2194 (January 13, 2000) and 67 FR 4472 (January 30, 2002). The publication of today's notice fulfills this requirement.

The negotiation period shall begin on January 6, 2004 and end on June 30, 2004. Parties who negotiate a voluntary license agreement during this period are encouraged to submit two copies of the agreement to the Copyright Office at the appropriate address listed above within 30 days of its execution.

Petitions

In the absence of a license agreement negotiated under 17 U.S.C. 112(e)(4) or 114(f)(2)(A), those copyright owners of sound recordings and entities availing themselves of the statutory licenses are subject to arbitration upon the filing of a petition by a party with a significant interest in establishing reasonable terms and rates for the statutory licenses. Petitions must be filed in accordance with 17 U.S.C. 112(e)(7), 114(f)(2)(C)(ii)(II), and 803(a)(1) and may be filed any time during the sixty-day period beginning on July 1, 2004. *See also,* 37 CFR 251.61. Parties should submit petitions to the Copyright Office at the appropriate address given in this notice. The petitioner must deliver an original and five copies to the Office.

Dated: December 30, 2003.

Marilyn J. Kretsinger,

Associate General Counsel.

[FR Doc. 04–183 Filed 1–5–04; 8:45 am]

BILLING CODE 1410–33–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Wednesday, January 14, 2004, and Thursday, January 15, 2004, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9 a.m. on January 14, and at 9 a.m. on January 15.

Topics for discussion include: recommendations on payment adequacy analyses for hospitals, physicians, outpatient dialysis, ambulatory surgical centers, home health, and skilled nursing facilities; and Medicare+Choice. Presentations will also be made on long-term care hospitals and dual eligible beneficiaries.

Agencies will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (*http://www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 04–119 Filed 1–5–04; 8:45 am]

BILLING CODE 6820–BW–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Entergy Nuclear Generation Company, Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its August 19, 2002, application for proposed amendment to Facility Operating License No. DPR–35 for the Pilgrim Nuclear Power Station, located in Plymouth County, Massachusetts. The licensee's application was supplemented by letters dated February 14, March 27, and April 14, 2003.

The proposed amendment would have modified the facility Technical Specifications (TSs) pertaining to post-accident monitoring instrumentation requirements to make the TSs more consistent with the Standard Technical Specifications for boiling water reactors.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 24, 2002 (67 FR 78519). However, by letter dated November 6, 2003, the licensee withdrew the amendment request.

For further details with respect to this action, see the application for amendment dated August 19, 2002, as supplemented by letters dated February 14, March 27, and April 14, 2003, and the licensee's letter dated November 6, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://*

www.nrc.gov/reading-rm/adams/html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of December, 2003.

For the Nuclear Regulatory Commission.

Travis Tate,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–186 Filed 1–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of January 5, 12, 19, 26, February 2, 9, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of January 5, 2004

There are no meetings scheduled for the Week of January 5, 2004.

Week of January 12, 2004—Tentative

Wednesday, January 14, 2004

9:30 a.m. Briefing on Status of Office of Chief Information Officer Programs, Performance, and Plans (Public Meeting) (Contact: Jacqueline Silber, 301–415–7330).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of January 19, 2004—Tentative

Wednesday, January 21, 2004

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of January 26, 2004—Tentative

There are no meetings scheduled for the Week of January 26, 2004.

Week of February 2, 2004—Tentative

There are no meetings scheduled for the Week of February 2, 2004.

Week of February 9, 2004—Tentative

There are no meetings scheduled for the Week of February 9, 2004.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Timothy J. Frye, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555, (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 31, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 04–311 Filed 1–2–04; 12:08 pm]

BILLING CODE 7590–01–M

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 12, 2003, through December 23, 2003. The last biweekly notice was published on December 23, 2003 (68 FR 74262).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 5, 2004, the licensee may file a request for a hearing with respect

to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 2, 2003.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Surveillance Requirement (SR) 4.0.2 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The

delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified frequency, whichever is less* * *'' to ''* * *up to 24 hours or up to the limit of the specified frequency, whichever is greater.* * *'' To support this change, the following requirement would be added to SR 4.0.2: ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed.'' Additionally, a new section 6.2.1 will be added to provide for a TS Bases Control Program.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application. The NSHC determination is restated below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in [a] margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on [a] margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: October 31, 2003.

Description of amendment request: The proposed amendment would revise the Minimum Critical Power Ratio (MCPR) Safety Limit contained in Technical Specification (TS) 2.1.1.2. Currently the MCPR value is greater than or equal to 1.12 for two recirculation loop operation and greater than or equal to 1.14 for single recirculation loop operation. The proposed revised MCPR would be greater than or equal to 1.11 for two recirculation loop operation and greater than or equal to 1.12 for single recirculation loop operation. Also, a second proposed change would add topical report NEDE–32906P–A, ''TRACG Application for Anticipated Operational Occurrences (AOO) Transient Analyses,'' to the list of documents specified in TS 5.6.5 describing the approved methodologies used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Proposed Change 1

The proposed change to Technical Specification 2.1.1.2 does not alter the assumptions of the accident analyses or the Technical Specification Bases. The MCPR Safety Limit values are calculated to ensure that greater than 99.9 percent of the fuel rods in the core avoid transition boiling during any plant operation if the safety limit is not violated. The derivation of the MCPR Safety Limit values specified in the Technical Specifications has been performed using the methods discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (*i.e.,* GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000, which incorporates Amendment 26. By letters dated November 10, 1999, and March 29, 2000, GNF, the NRC approved the use of Amendment 26 to NEDE–24011–P–A. Appropriate operational MCPR limits are applied that ensure the MCPR Safety Limit is not exceeded during all modes of operation and anticipated operational occurrences.

The revised MCPR Safety Limit values do not affect the operability of any plant systems nor do these revised values compromise any fuel performance limits; therefore, the probability of fuel damage will not be increased as a result of this change. The MCPR Safety Limit values do not impact the source term or pathways assumed in accidents previously evaluated, and there are no adverse effects on the factors contributing to offsite or onsite radiological doses. In addition, the revised MCPR Safety Limit values do not affect the performance of any equipment used to mitigate the consequences

of a previously evaluated accident and do not affect setpoints that initiate protective or mitigative actions.

Therefore, the proposed change to MCPR Safety Limit values contained in Technical Specification 2.1.1.2 does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Change 2

The proposed change to TS 5.6.5 will add General Electric Nuclear Energy topical report NEDE–32906P–A, ''TRACG Application for Anticipated Operational Occurrences (AOO) Transient Analyses,'' to the list of documents describing approved methodologies for determining core operating limits. Analyzed events are assumed to be initiated by the failure of plant structures, systems, or components. The core operating limits, which are developed using the topical report being added, ensure that the integrity of the fuel will be maintained during normal operations and that design requirements will continue to be met. The proposed change does not involve physical changes to any plant structure, system, or component. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. Use of the analytical methodologies described in the topical report being added to TS 5.6.5 will ensure that applicable design and safety analyses acceptance criteria are met. Use of these NRC-approved methodologies does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. Use of the approved methodologies described in the topical report being added to TS 5.6.5 ensures that plant structures, systems, or components are maintained consistent with the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event.

Therefore, the proposed change adding General Electric Nuclear Energy topical report NEDE–32906P–A to the TS 5.6.5 list of documents describing approved methodologies for determining core operating limits does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Proposed Change 1

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed revision of the MCPR Safety Limit values does not involve installation of any new or different equipment. No installed equipment is being operated in a different manner than currently evaluated. No new initiating events or transients will result from use of the revised MCPR Safety Limit values. As a result, no new failure modes are being introduced. Therefore, the proposed change to MCPR Safety Limit values contained in Technical Specification 2.1.1.2 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 2

The proposed change adding topical report NEDE–32906P–A to TS 5.6.5, and the use of the analytical methods described therein, does not involve any physical alteration of plant systems, structures, or components, other than allowing for fuel and core designs in accordance with NRC approved methodologies. The proposed methodology continues to meet applicable criteria for core operating limit analysis. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result no new failure modes are being introduced.

Therefore, the proposed change adding General Electric Nuclear Energy topical report NEDE–32906P–A to the TS 5.6.5 list of documents describing approved methodologies for determining core operating limits does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Proposed Change 1

The margin of safety is established through the design of the plant structures, systems, and components; through the parameters within which the plant is operated; through the establishment of setpoints for actuation of equipment relied upon to respond to an event; and through margins contained within the safety analyses. The revised MCPR Safety Limit values will not adversely impact the performance of plant structures, systems, components, and setpoints relied upon to respond to mitigate an accident or transient. The MCPR Safety Limit values are calculated to ensure that greater than 99.9 percent of the fuel rods in the core avoid transition boiling during any anticipated operation occurrences if the safety limit is not violated, thereby ensuring that fuel cladding integrity is maintained. The revised MCPR Safety Limit values have been calculated using NRC approved methods and procedures and preserve the existing margin to transition boiling. Based on the assurance that the fuel design criteria are being met, the revised MCPR Safety Limit values do not involve a reduction in a margin of safety.

Proposed Change 2

The margin of safety is established through the design of the plant structures, systems, and components, through the parameters within which the plant is operated, through the establishment of the setpoints for the actuation of equipment relied upon to respond to an event, and through margins contained within the safety analyses. The proposed change adding General Electric Nuclear Energy topical report NEDE–32906P–A to the TS 5.6.5 list of documents describing approved methodologies for determining core operating limits does not impact the condition or performance of structures, systems, setpoints, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change adding topical report NEDE–32906P–A to the TS 5.6.5 list of documents describing approved methodologies for determining core operating limits does not result in a significant reduction in the margin of safety.

Based on the above, PEC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois, and Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 3, 2003.

Description of amendment request: The proposed amendment would modify Technical Specifications (TS) 3.4.1, ''Recirculation Loops Operating,'' to add a requirement for the linear heat generation rate (LHGR) limits specified in the Core Operating Limits Report (COLR) to be met during single recirculation loop operation.

Technical Specification 3.4.1 for Dresden Nuclear Power Station (DNPS) Units 2 and 3, LaSalle County Station

(LSCS) Units 1 and 2, and Quad Cities Nuclear Power Station (QCNPS) Units 1 and 2, currently requires limits for average planar linear heat generation rate (APLHGR) and minimum critical power ratio (MCPR), as well as allowable values for certain Reactor Protection System and Control Rod Block functions, to be modified during single recirculation loop operation. The modified limits for APLHGR and MCPR are specified in the COLR. The proposed change adds a requirement to modify the LHGR limit as specified in the COLR with one recirculation loop in operation. Although there is currently no TS requirement to adjust the LHGR limit during single recirculation loop operation, in accordance with NRC Administrative Letter 98–10, ''Dispositioning of Technical Specifications that Are Insufficient to Assure Plant Safety,'' administrative controls are in place at DNPS and QCNPS to ensure that the LHGR limits are appropriately adjusted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The LHGR is a measure of the heat generation rate of a fuel rod in a fuel assembly at any axial location. Limits on the LHGR are specified to ensure that fuel design limits are not exceeded anywhere in the core during normal operation, including anticipated operational occurrences, and to ensure that the peak cladding temperature (PCT) during a postulated design basis LOCA does not exceed the limits specified in 10 CFR 50.46.

LHGR limits have been established consistent with the NRC-approved GESTAR methodology to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change establishes a requirement for LHGR limits to be modified, as specified in the COLR, during SLO such that the fuel is protected during SLO and during any plant transients or anticipated operational occurrences that may occur while in SLO.

Modifying the LHGR limits during SLO does not increase the probability of an evaluated accident. The proposed change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

Limits on the LHGR are specified to ensure that fuel design limits are not exceeded anywhere in the core during normal operation, including anticipated operational occurrences, and to ensure that the PCT during a postulated design basis LOCA does not exceed the limits specified in 10 CFR 50.46. This will ensure that the fuel design safety criteria (*i.e.*, less than 1% plastic strain of the fuel cladding and no fuel centerline melting) are met and that the core remains in a coolable geometry following a postulated design basis LOCA. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed change does not involve any modifications of the plant configuration or allowable modes of operation. Requiring the LHGR limits to be modified for SLO by applying the SLO LHGR multiplier ensures that the assumptions of the LOCA analyses are met.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change will not adversely affect operation of plant equipment. The change will not result in a change to the setpoints at which protective actions are initiated. LHGR limits during SLO are established to ensure that the PCT during a postulated design basis LOCA does not exceed the limits specified in 10 CFR 50.46. This will ensure that the core remains in a coolable geometry following a postulated design basis LOCA. The proposed change will ensure the appropriate level of fuel protection.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: December 16, 2003.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.4.5, ''Reactor Coolant System—Steam Generators,'' to allow a one-time extension of the steam generator tube inservice inspection interval from March 2004 to March 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The steam generator tubes perform both an accident prevention and an accident mitigation function. Steam generator tube integrity is necessary to prevent the loss of reactor coolant system inventory to the secondary system and to provide a barrier to fission product release to the environment. The layup and storage conditions of the steam generator during the extended outage have been assessed and determined to not adversely affect steam generator conditions. An operational assessment of the steam generators for approximately 1.4 effective full power year has been performed to assure acceptable structural integrity during the extended surveillance interval. The operational assessment for the steam generators has determined that primary-to-secondary leakage following a steam line break, which is the limiting event (other than a tube rupture), would continue to be acceptable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any new or different failure mechanism for the steam generators. Steam generator tube integrity will be maintained as previously analyzed following postulated events. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The layup and storage conditions of the steam generator during the extended outage have been assessed and determined to not adversely affect steam generator condition. The operational assessment for the mid-cycle outage has shown that structural margins are greater at approximately 1.4 EFPY then they would be at the end of a typical full cycle of operation. Accident induced leakage is projected to be the same for the surveillance interval extension period as it would be for a full cycle of operation. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: January 30, 2003.

Description of amendment request: This license amendment request proposes a revision to the reactor pressure vessel (RPV) material surveillance program described within the Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR) from a plant-specific program to the Boiling-Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

NRC [Nuclear Regulatory Commission] regulations impose requirements upon the reactor coolant system to ensure that adequate safety margins against nonductile or rapidly propagating failures exits during normal operation, anticipated operational occurrences, and system hydrostatic tests. These requirements are set forth in 10 CFR 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' Appendix G, ''Fracture Toughness Requirements,'' and Appendix H requires that changes in the fracture toughness properties of reactor vessel materials, resulting from the neutron irradiation and the thermal environment, are monitored by a material surveillance program. To determine the effects of neutron fluence on the nil-ductility reference temperature of reactor vessel materials, the methods provided in Regulatory Guide (RG) 1.99, ''Radiation Embrittlement of Reactor Vessel Materials,'' Revision 2 are used.

As described in the PNPP USAR, the current PNPP material surveillance program is a plant-specific program which complies with 10 CFR 50, Appendix H.

The proposed amendment involves changing the material surveillance program from a plant-specific program to an integrated surveillance program. The use of an integrated program is consistent with the requirements of 10 CFR 50, Appendix H, Paragraph III.C. The integrated program proposed by PNPP is the BWRVIP ISP. The BWRVIP ISP has been reviewed and approved by the NRC staff as an acceptable program and is in conformance with 10 CFR 50, Appendix H. Use of the ISP, among its many benefits, will increase the number of data points used in the evaluation of changes in vessel material properties. This will improve compliance with the aforementioned NRC regulations. The methods contained in RG 1.99, Revision 2, will still be used to determine the effects of neutron fluence upon the nil-ductility reference temperature of the PNPP reactor vessel materials.

This change will not affect the reactor pressure vessel, as no physical changes are involved. The proposed change will not cause the reactor pressure vessel or interfacing systems to be operated outside of any design or testing limits. Furthermore, the proposed changes will not alter any assumptions previously made in evaluating the radiological consequences of any accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change revises the PNPP licensing bases to reflect participation in the BWRVIP ISP. The ISP was approved by the NRC staff as an acceptable material surveillance program which complies with 10 CFR 50, Appendix H. The proposed change will not impact the manner in which the plant is designed or operated. No new accident types or failure modes will be introduced as a result of the proposed change. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from that previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

The material surveillance program requirements contained in 10 CFR 50, Appendix H, provide assurance that adequate margins of safety exist for the reactor coolant system against nonductile or rapidly propagating failures during normal operation, anticipated operational occurrences, and safety hydrostatic tests. The BWRVIP ISP has been approved by the NRC staff as an acceptable material surveillance program which complies with 10 CFR 50, Appendix H. The ISP will provide the material surveillance data which will ensure that the safety margins require by NRC regulations are maintained for the PNPP reactor coolant system. Therefore, the proposed change does not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: August 14, 2003.

Description of amendment request: This license amendment request (LAR) proposes a revision to increase the analytical limit and the resulting Technical Specification (TS) allowable value (AV) related to the setpoint for the Main Steam Line Turbine Building Temperature—High, system isolation function. This LAR revises the main steam line trip setpoint AV based on improved computer modeling of the expected building temperature transients in the event of a larger steam leak. The proposed change improves the operating margins and reduces challenges to the plant by avoiding unnecessary plant shutdown transients from turbine building high temperatures from other than a main steam line leak.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The nuclear boiler Leak Detection System (LDS) instrumentation associated with the proposed amendment assists in the detection of a small steam leak to prevent a significant release of radioactive material created by conditions other than a break within the Reactor Coolant Pressure Boundary (RCPB).

The proposed amendment establishes a new steam leak system isolation temperature limit in the Turbine Building.

There is no accident analysis or transient that credits the subject LDS instrumentation. The subject instrumentation is for the detection of small steam leaks and not a pipeline break as described in the Updated Safety Analysis Report (USAR) Chapter 15 accident analysis. The detection of main steam line flow is the parameter used in the accident analysis to signal a steam line break outside of containment.

The proposed amendment does not impact the physical design or location of the LDS instrumentation. This proposed amendment is associated only with the results of a main steam line leak in the non-safety related Turbine Building and has no impact on the initiation of this leak. The analysis completed in support of the proposed amendment indicates that the radiological effects associated with the new steam leak system isolation limit remains bounded by the existing large main steam line break analysis contained within the PNPP [Perry Nuclear Power Plant] USAR. The proposed leakage limit does not alter the current function of the LDS that isolates the Main Steam system prior to the leakage degrading to a point where the system integrity, *i.e.*, piping integrity and makeup capability, is challenged. Therefore, the proposed amendment ensures that the criteria for acceptance as established in the original licensing bases and the requirements of the original design basis remain valid. It has been determined that the service life, *i.e.*, Equipment Qualification (EQ) and structural integrity of the Structures, Systems and Components (SSC) in the affected areas are not adversely impacted by the proposed amendment.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment does not impact the physical design or location of the associated LDS instrumentation. The instruments will still promptly initiate the automatic isolation of the appropriate Containment and Drywell isolation valves to mitigate steam leakage as credited in the original licensing bases. This proposed amendment is associated only with the results of a main steam line break in the non-safety related Turbine Building and has no impact on the initiation of this leak. The analysis completed in support of the proposed amendment indicates that the radiological effects associated with the new steam leak system isolation limit remains bounded by the existing large main steam line break analysis contained within the PNPP USAR. The EQ and structural integrity of any SSC located within the non-safety related Turbine Building are not affected by the proposed amendment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a single reduction in the margin of safety.

The analysis performed for the proposed amendment proves that the appropriate instruments will still promptly initiate automatic system isolation, upon sensing temperatures in excess of their setpoints. The radiological effects associated with the proposed small steam leak to be detected remain bounded by the existing large main steam line break analysis contained within the USAR. Steam leaks in the affected area of the Turbine Building will be detected on a timely basis so that the Main Steam system will be isolated before such degradation could become sufficiently severe to jeopardize the safety of the system. Also, steam leaks will be detected before the leakage could increase to a level beyond the capability of the makeup system. Therefore, the proposed amendment ensures that the criteria for acceptance as established in the original licensing bases and the requirements of the original design basis remain valid. There is no accident analysis or transient that credits the associated leak detection instrumentation, and the LDS Main Steam Line Turbine Building Temperature—High function is categorized as non-risk significant. Further, the proposed amendment reduces the challenges to SSCs due to unnecessary plant shutdowns created by conditions other than a main steam line leak. The EQ and structural integrity of any SSC located within the Turbine Building are not affected by the proposed amendment. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: October 29, 2003.

Description of amendment request: The proposed license amendments would allow relocation of specific pressure and flow values for the boric acid makeup (BAM) pumps, containment spray (CS) pumps, high pressure safety injection (HPSI) pumps, and low pressure safety injection (LPSI) pumps from the St. Lucie Units 1 and 2 Technical Specifications to the Updated Final Safety Analysis Reports (UFSARs). This is consistent with the Combustion Engineering Improved Standard Technical Specifications and the Nuclear Regulatory Commission Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would operation of the facility in accordance with the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to relocate the BAM, CS, HPSI, and LPSI pump surveillance verification details in the aforementioned Technical Specifications surveillance requirements to the St. Lucie UFSARs do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility, or the manner in which it is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the St. Lucie UFSARs.

The subject surveillance requirement criteria relocated to the St. Lucie UFSARs will continue to be administratively controlled. Changes to the St. Lucie UFSARs are evaluated and controlled under 10 CFR 50.59 prior to implementation. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Would operation of the facility in accordance with the proposed amendments create the possibility of a new different kind of accident from any accident previously evaluated?

The proposed changes do not alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated.

There are no changes to the source term or radiological release assumptions used in evaluating the radiological consequences in the St. Lucie UFSARs. The proposed changes have no adverse impact on the component or system interactions. The proposed changes will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the UFSARs. The proposed changes do not change the level of programmatic and procedural details of assuring operation of the facility in a safe manner. Since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed changes do not create the possibility of a new different kind of accident from any previously analyzed.

(3) Would operation of the facility in accordance with the proposed amendments involve a significant reduction in a margin of safety?

There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes do not reduce the level of programmatic or procedural controls associated with the activities presently performed via the aforementioned surveillance requirements.

Future changes to the relocated technical requirements will require an evaluation pursuant to the provisions of 10 CFR 50.59 prior to implementation.

Therefore, relocation of the specific pump pressure and flow criteria contained in the aforementioned Technical Specification Surveillance Requirements to the St. Lucie Units 1 and 2 UFSARs does not involve a significant reduction in the margin of safety provided in the existing specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: November 21, 2003.

Description of amendment request: The proposed amendments would transfer Technical Specification (TS) requirements 6.5 (Review and Audit), 6.8.2 and 6.8.3 (procedures and programs review specifics), and 6.10 (Record Retention) to the quality assurance plan (a licensee controlled document) for St. Lucie Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the St. Lucie Plant TS do not adversely affect accident initiators or precursors, nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient, or accident conditions, nor do they change any of the procedures related to operation of the plant. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative for the purpose of updating TS to reflect current NRC and industry initiatives.

The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the St. Lucie UFSARs. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released off site, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, it is concluded that these proposed revisions do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the St. Lucie Plant TS do not change the operation or the design basis of any plant system or component during normal or accident conditions. The proposed changes do not include any physical changes to the plant. In addition, the proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes.

The proposed changes are administrative in nature and only correct, update and clarify the St. Lucie Plant Technical Specifications to reflect NRC guidance, *i.e.*, AL 95–06. The proposed changes do not modify the facility nor do they affect the plant's response to normal, transient, or accident conditions. The changes do not introduce a new mode of plant operation. The changes are an enhancement and do not affect plant safety. The plant's design and design basis are not revised and the current safety analyses remains in effect.

Thus, these proposed revisions to the St Lucie Plant TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes are administrative changes to the St. Lucie Plant Technical Specifications. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design or its method of operation revised by the proposed changes.

Thus, it is concluded that these proposed revisions to the St. Lucie Plant TS do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: December 6, 2003.

Description of amendment request: The proposed amendment would revise the Unit 1 and 2 Technical Specifications (TSs) by adding a requirement to apply linear heat generation rate [LHGR] limits if the main turbine bypass system becomes inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed change to the TS 3.7.6 does not directly or indirectly affect any plant system, equipment, component, or change the processes used to operate the plant. Further, the MCPR [minimum critical power ratio] and LHGR limits documented in the unit/cycle specific COLRs [core operating limits report] for Main Turbine Bypass System operable and inoperable are generated using NRC [Nuclear Regulatory Commission] approved methodology and meet the applicable acceptance criteria. The COLR operating limits thus assure that the MCPR Safety Limit and LHGR Limit will not be exceeded during normal operation or anticipated operational occurrences. Thus, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to TS 3.7.6 does not directly or indirectly affect any plant system, equipment, or component and therefore does not affect the failure modes of any of these items. Thus, the proposed changes do not create the possibility of a previously unevaluated operator error or a new single failure.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Since the proposed changes do not alter any plant system, equipment, component, or the processes used to operate the plant, the proposed change will not jeopardize or degrade the function or operation of any plant system or component governed by Technical Specifications. The proposed change to TS 3.7.6 does not involve a significant reduction in the margin of safety as currently defined in the Bases of the applicable Technical Specification sections, because the MCPR and LHGR limits calculated for Main Turbine Bypass System operable and inoperable preserve the required margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc, General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101,1179.

NRC Section Chief: Richard J. Laufer.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: October 22, 2003 (TSC 03–12).

Description of amendment request: The proposed change involves the extension from 1 hour to 24 hours of the completion time (CT) for Action (a) of Technical Specification (TS) 3.5.1.1, which defines requirements for accumulators. Accumulators are part of the emergency core cooling system and consist of tanks partially filled with borated water and pressurized with nitrogen gas. The contents of the tank are discharged to the reactor coolant system (RCS) if, as during a loss-of-coolant accident, the coolant pressure decreases to below the accumulator pressure. Action (a) of TS 3.5.1.1 specifies a CT to restore an accumulator to operable status when it has been declared inoperable for a reason other than the boron concentration of the water in the accumulator not being within the required range. This change was proposed by the Westinghouse Owners Group participants in the TS Task Force (TSTF) and is designated TSTF–370. TSTF–370 is supported by NRC-approved topical report WCAP–15049–A, ''Risk-Informed Evaluation of an Extension to Accumulator Completion Times,'' submitted on May 18, 1999. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on July 15, 2002 (67 FR 46542), on possible amendments concerning TSTF–370, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 12, 2003 (68 FR 11880). The licensee affirmed the applicability of the following NSHC determination in its application dated October 22, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The basis for the accumulator limiting condition for operation (LCO), as discussed in Bases Section 3.5.1.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP–15049–A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of the increase in the accumulator CT on core damage frequency for all the cases evaluated in WCAP–15049–A is within the acceptance limit of 1.0E–06/yr for a total plant core damage frequency (CDF) less than 1.0E–03/yr. The incremental conditional core damage probabilities calculated in WCAP–15049–A for the accumulator CT increase meet the criterion of 5E–07 in Regulatory Guides (RG) 1.174, ''An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis,'' and 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications,'' for all cases except those that are based on design basis success criteria. As indicated in WCAP–15049–A, design basis accumulator success criteria are not considered necessary to mitigate large break loss-of-coolant accident (LOCA) events, and were only included in the WCAP–15049–A evaluation as a worst case data point. In addition, WCAP–15049–A states that the NRC has indicated that an incremental conditional core damage frequency (ICCDP) greater than 5E–07 does not necessarily mean the change is unacceptable.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049–A evaluation, the plant design will not be changed with this proposed technical specification CT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator CT increase has a very small impact on core damage frequency. The WCAP–15049–A evaluation demonstrates that the small increase in risk due to increasing the CT for an inoperable accumulator is within the acceptance criteria provided in RGs 1.174 and 1.177. No new accidents or transients can be introduced with the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the departure from nucleate boiling ratio (DNBR) correlation limit, the design DNBR limits, or the safety analysis DNBR limits.

The basis for the accumulator LCO, as discussed in Bases Section 3.5.1.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of WCAP–15049–A, the proposed change will allow plant operation with an inoperable accumulator for up to 24 hours, instead of 1 hour, before the plant would be required to begin shutting down. The impact of this on plant risk was evaluated and found to be very small. That

is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming accumulators are needed to mitigate the design basis event, has a very small impact on plant risk.

Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049–A evaluation, the impact of increasing the accumulator CT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP–15049–A evaluation.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 8, 2003.

Description of amendment request: The licensee is proposing to revise Technical Specification (TS) Section 5.5.6, ''Containment Tendon Surveillance Program,'' for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The proposed revision to TS 5.5.6 is to indicate that the Containment Tendon Surveillance Program, inspection frequencies, and acceptance criteria shall be in accordance with Section XI, Subsection IWL of the ASME Boiler and Pressure Vessel Code and the applicable addenda as required by 10 CFR 50.55a, except where an exemption or relief has been authorized by the NRC. The licensee has also proposed to delete the provisions of Surveillance Requirement 3.0.2 from this TS. In addition, the licensee is proposing to revise TS 5.5.16, ''Containment Leakage Rate Testing Program,'' to add exceptions to Regulatory Guide 1.163, ''Performance-Based Containment Leak-Testing Program.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The revised requirements do not affect the function of the containment post-tensioning system components. The post-tensioning systems are passive components whose failure modes could not act as accident initiators or precursors.

The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the containment for the purpose of the Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The frequency of visual examinations of the concrete surfaces of the containment and the mode of operation during which those examinations are performed has no relationship to or adverse impact on the probability of any of the initiating events assumed in the accident analyses. The proposed change would allow visual examinations that are performed pursuant to NRC approved ASME Section XI Code requirements (except where relief has been granted by the NRC) to meet the intent of visual examinations [as] required by Regulatory Guide 1.163, [because of the commitment in Appendix 3A of the Callaway Final Safety Analysis Report,] without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the Code required visual examinations. As such, the safety function of the containment as a fission product barrier is maintained.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The function of the containment post-tensioning system components are not altered by this change. The change affects the frequency of visual examinations that will be performed for the concrete surfaces [of the containment]. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The proposed change does not involve a modification to the physical configuration of the plant (*i.e.,* no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent[s] that may be released off-site and there is no increase in individual or cumulative occupational exposure.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The function of the containment post-tensioning system components are not altered by this change. The change affects the frequency of visual examinations that will be performed for the concrete surfaces [of the containment]. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The safety function of the containment as a fission product barrier will be maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 30, 2003.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) for alternating current (AC) sources—operating (TS 3.8.1) and electrical power distribution systems—operating (TS 3.8.9) by extending the required action completion times (CTs). For TS 3.8.1, the amendment would extend the CT to restore a single inoperable diesel generator (DG) to operable status by adding a note to the CT for Required Action B.4. A note would also be added to the CT for Required Action A.3 to restore a single inoperable offsite circuit to operable status to account for the note that would be added to the CT for Required Action B.4.

For TS 3.8.9, the CT for Required Action C.1 (to restore a single inoperable AC vital bus subsystem to

operable status) would be extended to 24 hours. The second CTs, from the discovery of the failure to meet the limiting condition for operation (LCO), for Required Actions B.1 (to restore a single inoperable AC electrical power distribution subsystem to operable status), C.1 (given above), and D.1 (to restore a single inoperable direct current (DC) electrical power distribution subsystem to operable status) would be extended to 34 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Completion Times do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the electrical power sources and distribution systems. The proposed changes to the second Completion Times are administrative in nature and only intended to prevent the plant from successively entering and exiting ACTIONS associated with different systems governed by one LCO without ever meeting the LCO. The electrical power sources and distribution subsystems will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by core damage frequency (CRF) and large early release frequency (LERF) is acceptable. In addition, for the Completion Time change, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are also acceptable. These changes are consistent with the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the electrical sources and distribution subsystems will continue to perform their [safety] functions with high reliability as originally assumed, and the increase in risk as measured by CDF, LERF, ICCDP, [and] ICLERP is acceptable, there will not be a significant increase in the consequences of any accidents [previously evaluated].

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended [safety] function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant [radiological] consequences.

Therefore, the proposed change[s do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the electrical distribution subsystems provide plant protection. The use of the Sharpe Station will provide an alternate AC power source in the event of emergent inoperability of a WCGS [Wolf Creek Generating Station] DG or a complete loss of all WCGS emergency AC power. The changes do not alter assumptions made in the safety analysis. The changes to Completion Times do not change any existing accident scenarios, nor create any new or different accident scenarios. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change[s do] not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and is consistent with the acceptance criteria contained in Regulatory Guides 1.174 and 1.177.

Therefore, the proposed change[s do] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: November 8, 2002.

Brief description of amendment: The amendment revised the Technical Specifications to delete the requirements for the auxiliary and fuel handling building air treatment system.

Date of issuance: December 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 248.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 24, 2002 (67 FR 78517).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: May 28, 2003, as supplemented October 8, 2003.

Brief description of amendment: This amendment eliminates the need to credit Boraflex neutron-absorbing material for reactivity control in the spent fuel storage pool.

Date of issuance: December 22, 2003.

Effective date: December 22, 2003.

Amendment No.: 198.

Facility Operating License No. DPR–23: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 8, 2003 (68 FR 40710). The October 8, 2003, supplement contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: December 11, 2002, as supplemented June 24, 2003.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) related to N–1 loop operation. Specifically, the changes eliminate N–1 loop operation from particular sections of the TSs and makes other changes that are clarifying and/or administrative in nature. In addition, the TS Bases are revised to address the proposed changes.

Date of issuance: December 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 217.

Facility Operating License No. NPF–49: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2800). The January 24, 2003, supplement contained clarifying information and did not change the staff's proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 24, 2003, as supplemented by letters dated June 25 and October 15, 2003.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to relocate certain reactor coolant system cycle-specific parameter limits from the TSs to the Core Operating Limits Report, and revises the minimum allowable reactor coolant system flow rate.

Date of issuance: December 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 210 and 204.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 18, 2003 (68 FR 54749), November 18, 2003 (68 FR 65090).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 19, 2003, as supplemented October 27, 2003.

Brief description of amendment: This amendment revises the Technical Specifications to require ''flow indication,'' rather than ''safety-grade flow indication,'' to satisfy Surveillance Requirement 4.7.1.7.e.2 for the motor driven feedwater pump.

Date of issuance: December 18, 2003.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 261.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 10, 2003 (68 FR 34669).

The supplement dated October 27, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2003.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 15, 2003.

Brief description of amendment: The amendment revises the Technical Specification (TS) requirements for surveillance of the status of Secondary Containment Isolation Valves and Blind Flanges in Surveillance Requirement 3.6.4.2.1, consistent with TS Task Force Traveler-45 Revision 2.

Date of issuance: December 5, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 202.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 28, 2003 (68 FR 61479).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: April 11, 2003.

Brief description of amendment: The amendment revises TS Section 5.0, ''Administrative Controls,'' to make various administrative, editorial, and typographical changes.

Date of issuance: December 15, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 213.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2003 (68 FR 64136).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 2003.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of application for amendment: July 25, 2003, supplemented by letters dated October 3, 2003, and December 3, 2003.

Brief description of amendment: This amendment approves the use of the modified Unit 1 turbine gantry crane and turbine building support structure in a single failure proof application and at a rated capacity of 105 tons for handling of spent fuel casks as documented in the Defueled Safety Analysis Report (DSAR). The DSAR changes approved by this amendment are needed to permit use of the modified turbine gantry crane and turbine building support structure for lifting and handling of the spent fuel casks from the SONGS Unit 1 spent fuel pool to the Independent Spent Fuel Storage Installation.

Date of issuance: December 18, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: Unit 1–162.

Facility Operating License No.DPR–13: Amendment revises the license to permit use of the turbine building gantry crane in a single failure proof application at a rated capacity of 105 tons for handling of spent fuel casks.

Date of initial notice in ***Federal Register:*** September 18, 2003 (68 FR 54751).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2003.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: December 19, 2002, as supplemented October 20, 2003.

Brief description of amendments: These amendments correct various typographical, editorial, and other administrative errors currently in the Technical Specifications for Surry Power Station, Units 1 and 2.

Date of issuance: December 16, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 238 and 237.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5684). The supplement dated October 20, 2003, provided clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 2003.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, *see* (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety

Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By February 5, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

STP Nuclear Operating Company, Docket No. 50–499, South Texas Project, Unit 2, Matagorda County, Texas

Date of amendment request: December 23, 2003.

Description of amendment request: The amendments revise Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' to extend the allowed outage time for Unit 2 Standby Diesel Generator 22 from 14 days to 21 days as a one-time change for the purpose of collecting data associated with failure of SDG–22.

Date of issuance: December 23, 2003.

Effective date: December 23, 2003.

Amendment Nos.: Unit No. 2: 148.

Facility Operating License Nos. NPF–76 and NPF–80: Amendments revise the Technical Specifications.

Public comments requested as to final no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated December 23, 2003.

Attorney for licensee: A. H. Gutterman, Esquire, Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Dated at Rockville, Maryland, this 24th day of December, 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–8 Filed 1–5–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549.

Extension:

Rule 35d–1; SEC File No. 270–491; OMB Control No. 3235–0548.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(''Act'') the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 35d–1 under the Investment Company Act of 1940, Investment Company Names.''

Rule 35d–1 under the Investment Company Act of 1940 [17 CFR 270.35d–1] generally requires that investment companies with certain names invest at least 80% of their assets according to what their names suggests. The rule provides that an affected investment company must either adopt this 80% requirement as a fundamental policy or adopt a policy to provide notice to shareholders at least 60 days prior to any change in its 80% investment policy. This preparation and delivery of the notice to existing shareholders is a collection of information within the meaning of the Act.

The Commission estimates that there are 7,200 open-end and closed-end management investment companies and series that have descriptive names that are governed by the rule. The Commission estimates that of these 7,200 investment companies, approximately 24 provide prior notice to their shareholders of a change in their investment policies per year. The Commission estimates that the annual burden associated with the notice requirement of the rule is 20 hours per affected investment company or series. The total burden hours for Rule 35d–1 is 480 per year in the aggregate (24 responses × 20 hours per response). Estimates of average burden hours are made solely for the purposes of the Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under Rule 35d–1 is mandatory. The information provided under Rule 35d–1 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 23, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–152 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15c2–12; SEC File No. 270–330; OMB Control No. 3235–0372.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- Rule 15c2–12 Disclosure requirements for municipal securities.

Rule 15c2–12, under the Securities Exchange Act of 1934, requires underwriters of municipal securities: (1) To obtain and review a copy of an official statement deemed final by an issuer of the securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with the issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement to comply both with this rule and any rules of the MSRB; (4) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request; (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or other specified person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information about the issue or issuer on a continuing basis to a nationally recognized municipal securities information repository; and (6) to review the information the issuer of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

These disclosure and recordkeeping requirements will ensure that investors have adequate access to official disclosure documents that contain details about the value and risks of particular municipal securities at the time of issuance while the existence of

compulsory repositories will ensure that investors have continued access to terms and provisions relating to certain static features of those municipal securities. The provisions of Rule 15c2–12 regarding an issuer's continuing disclosure requirements assist investors by ensuring that information about an issue or issuer remains available after the issuance.

Municipal offerings of less than $1 million are exempt from the rule, as are offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. It is estimated that approximately 12,000 brokers, dealers, municipal securities dealers, issuers of municipal securities, and nationally recognized municipal securities information repositories will spend a total of 123,850 hours per year complying with Rule 15c2–12.

There is no specific retention period applied by Rule 15c2–12 for the recordkeeping requirement contained in Rule 15c2–12. The retention period is determined by private agreement between a nationally recognized municipal securities information repository and the issuer.

The recordkeeping requirement is mandatory to ensure that investors have access to information about the issuer and particular issues of municipal securities. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–215 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information, Washington, DC 20549.

Extension: Rule 17Ad-10; SEC File No. 270–265; OMB Control No. 3235–0273.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17Ad–10: Prompt posting of certificate detail to master securityholder files, maintenance of accurate securityholder files, communications between co-transfer agents and recordkeeping transfer agents, maintenance of current control book, retention of certificate detail and ''buy-in'' of physical over-issuance

Rule 17Ad–10, 17 CFR 240.17Ad–10, under the Securities Exchange Act of 1934, requires approximately 950 registered transfer agents to create and maintain minimum information on securityholders' ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to keep certificate detail that has been cancelled from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding (a ''control book''). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, and ensure the transfer agent is ware of the number of securities that are properly authorized by the issuer, thereby avoiding overissuance.

There are approximately 950 transfer agents currently registered with the Commission. The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totalling 19,000 hours industry-wide. The average cost per hour is approximately $20 per hour, with the industry-wide cost estimated at approximately $380,000. However, the information required by Rule 17Ad–10 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–218 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49010; File No. 4–429]

Joint Industry Plan; Notice of Filing of Joint Amendment No. 8 to the Options Intermarket Linkage Plan Relating to Satisfaction Orders and Trade-Throughs

December 30, 2003.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on December 18, 2003, December 22, 2003, December 29, 2003, and December 30, 2003, the International Securities Exchange, Inc. (''ISE''), the Pacific Exchange, Inc. (''PCX''), the American Stock Exchange LLC (''Amex''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Chicago Board Options Exchange, Inc. (''CBOE'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''SEC'' or

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

''Commission'') an amendment (''Amendment No. 8'') to the Options Intermarket Linkage Plan (''Linkage Plan'').[3] In proposed Joint Amendment No. 8, the Participants propose to extend the pilot provision limiting trade-through liability to 10 contracts for each Satisfaction Order (''S Order'') at the end of the day for an additional five months, until June 30, 2004. The Commission is publishing this notice to solicit comments from interested persons on the proposed Linkage Plan amendment.

I. Description and Purpose of the Amendment

The Participants are proposing to extend the pilot provision that limits ''trade-through''[4] liability to 10 contracts for each S Order at the end of the day for an additional five months, until June 30, 2004, in order to gain more experience with the effect of this limitation on trade-through liability. Pursuant to the pilot, an Participant member's trade-through liability is limited to 10 contracts per Satisfaction Order for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

The Participants originally proposed this limitation on liability as a one-year pilot in Amendment No. 4 to the Plan.[5] In Amendment No. 4, the Participants represented that members of various exchanges had raised concerns regarding their obligation to fill Satisfaction Orders (which they receive when an options exchange disseminating a better price complains about a trade-through) at the close of trading in the underlying security. Specifically, members expressed concern that they may not have time to hedge the positions they acquire.[6] Thus, the Participants proposed to limit liability for trade-throughs for the last five minutes of the trading day in the underlying security to the filling of 10 contracts per Participant, per transaction. The Participants represented that they believed that the proposal would protect small customer orders, yet establish a reasonable limit for their members' liability. Further, the Participants represented that the proposal would not affect a member's potential liability under an exchange's disciplinary rule for engaging in a pattern or practice of trading through other markets under Section 8(c)(i)(C) of the Linkage Plan.

In the order approving the pilot, Commission stated that in the event the Participants chose to seek permanent approval of this limitation, the Participants must provide the Commission with a report (the ''Report'') regarding data on the use of the exemption no later than 60 days before seeking permanent approval.[7] In Amendment No. 8, the Participants represente that if they seek to make the limitations on trade-throughs permanent, they will submit the Report to the Commission no later than March 31, 2004.

With respect to the Report, the Participants represente in Amendment No. 8 that each Participant currently plans to submit individual Reports regarding the requested data as it pertains to their own exchange. They further represent that these Reports will detail the number of trade-throughs in the last seven minutes and the rest of the day, as well as the number and size of Satisfaction Orders that would have been filled absent the current exemption.[8] In addition, the Participants represent that the Reports will provide information on the extent to which the exchange's members hedge their options trading during the day as part of their overall risk management. Finally, the Participants represent that they will make every effort to provide specific information regarding hedging at the end of the trading day.

II. Implementation of the Plan Amendment

The Participants propose to make the proposed amendment to the Linkage Plan reflected in this filing effective when the Commission approves the amendment.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Linkage Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. 4–429. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed Linkage Plan amendment that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the Amex, CBOE, ISE, Phlx, and PCX. All submissions should refer to File No. 4–429 be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–217 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx and PCX joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). On June 27, 2001 and May 30, 2002, respectively, the Commission approved amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) and 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002).

[4] A ''Trade-Through'' is defined as a transaction in an options series at a price that is inferior to the national best bid and offer in an options series calculated by a Participant.

[5] The Commission approved the pilot on a 120-day temporary basis on January 31, 2003. *See* Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. *See* Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (File No. 4–429).

[6] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

[7] *See supra* note 4.

[8] The Participants explain that, for example, if an exchange receives a Satisfaction Order for 50 contracts and only fills 10, 40 contracts ''would have been filled absent this exemption.'' To the extent the Participants have the relevant information, the Report will compare the size of Satisfaction Orders they could have sent in the last seven minutes of the trading day with the size of the actual fills. However, the ability to provide this data will depend on whether a particular Participant has the data on the size of the trade-throughs underlying the Satisfaction Orders, and not just the data on the size of the Satisfaction Orders themselves.

[9] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48998; File No. SR–Amex–2003–101]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Membership's Duty to Report Fraudulent or Manipulative Conduct

December 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 3 of the Amex's *General and Floor Rules* to require Amex members or member organizations to report to the Exchange fraudulent or manipulative conduct in connection with the trading of securities on the Floor.

The text of the proposed rule change appears below. Proposed new language is *italicized*; proposed deletions are [bracketed].

* * * * *

[Excessive Dealing] General Prohibitions and Duty to Report

Rule 3. (a)–(g) no change

(h) It shall be deemed an act detrimental to the interest or welfare of the Exchange for any member, member organization or employee thereof to fail to report immediately to the Exchange any fraudulent or manipulative conduct in connection with the trading of securities on the Floor (i) of which the member, member organization or employee thereof has knowledge, or (ii) that the member, member organization or employee thereof has been asked to perform. Reports to the Exchange of fraudulent or manipulative conduct shall be made in such form and to such person(s) as the Exchange shall prescribe from time to time in a notice to the membership.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Paragraphs (b) and (c) of Article V, Section 4 of the Amex Constitution grant the Exchange the authority to discipline any member or member organization that engages in fraud and fictitious transactions.[3] Furthermore, Paragraph (j) of Article V, Section 4 of the Amex Constitution grants the Exchange broad authority to discipline members and member organizations for conduct that is detrimental to the interest or welfare of the Exchange. The Exchange deems any fraudulent or manipulative conduct in connection with the trading of securities on the Exchange's Floor to be a violation of the Amex Constitution and detrimental to the interest and welfare of investors and the Exchange.

The Exchange states that, at present, no Amex rule exists requiring members or member organizations to report to the Exchange fraudulent or manipulative acts that occur in connection with transactions on the Floor. Accordingly, the Exchange believes that there is an opportunity to enhance its ability to police such behavior. The Exchange therefore proposes to add paragraph (h) to Amex Rule 3 to require any member and member organization to report immediately to the Exchange fraudulent or manipulative conduct in connection with the trading of securities on the Floor of which the member or member organization has knowledge or has been asked to perform.

In addition to adding paragraph (h), the Exchange proposes to use this opportunity to amend the title of Amex Rule 3. By way of background, Amex Rule 3 (''Excessive Dealings'') contains various prohibitions impacting members and member organizations. For example, among other prohibitions, Amex Rule 3 forbids a member or member organization from: (i) Effecting trades for an account in which the member or member organization has a direct or indirect interest where such trades are excessive in view of that member or member organization's financial resources or in view of the market for the security; (ii) circulating rumors of a sensational character that might affect market conditions; (iii) improperly using or disclosing confidential information entrusted to the member or member organization by customers; and (iv) in the case of a regular or options principal member, effecting a transaction with an associate member or non-member on the Floor of the Exchange unless permitted by rule. In light of the unrelated prohibitions of the rule and the proposed addition of paragraph (h), the Exchange proposes to change the title of Amex Rule 3 from ''Excessive Dealings'' to ''General Prohibitions and Duty to Report.''

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act[4] in general and furthers the objectives of section 6(b)(5) of the Act[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In addition to the prohibitions of Article V, Section 4 of the Amex Constitution, Rule 4 of the Amex's *General and Floor Rules* prohibits transactions executed ''for the purpose of creating or inducing a false, misleading or artificial appearance of activity in [a] security or for the purpose of unduly and improperly influencing the market price of [a] security or for the purpose of making a price which does not reflect the true state of the market in [a] security.''

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. Amex–2003–101 and should be submitted by January 27, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–222 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48996; File No. SR–CBOE–2003–49]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Time Periods Within the Membership Process

December 29, 2003.

On October 21, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would extend the time periods (i) after which an individual's inactive nominee status will be terminated and (ii) during which a former individual member may reapply for membership through the renewal/change of status application process. The **Federal Register** published the proposed rule change for comment on November 24, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that CBOE's rules be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change should increase the flexibility of the Exchange's membership process without compromising its standards. In addition, the Commission believes that the proposed rule change should prevent former members from trying to obtain the lower renewal applicant fee without following through on their applications or membership approvals on a timely basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–2003–49) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–223 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49004; File No. SR–CHX–2002–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated To Amend Its Minor Rule Violation Plan

December 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The CHX amended the proposed rule change on December 22, 2003,[3] and again on December 23, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 48797 (November 17, 2003), 68 FR 65975.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 17, 2003 letter from Ellen J. Neely, Senior Vice President (''SVP'') and General Counsel (''GC''), CHX, to Joseph P. Morra, Special Counsel, Division of Market Regulation (''Division''), Commission, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original filing.

[4] *See* December 22, 2003 letter from Ellen J. Neely, SVP and GC, CHX, to Joseph P. Morra, Special Counsel, Division, Commission, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to add to its Minor Rule Violation Plan (''Plan'') certain violations of Rule 11Ac1–1 under the Act[5] (''Firm Quote Rule''), as well as violations of CHX Article XX, Rule 37(a) (''BEST Rule'') and CHX Article XX, Rule 37, Interpretation and Policy .04 (''Ability to Switch MAX to Manual Execution'' procedures). The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Plan provides a method for the Exchange to prosecute minor violations of rules contained in the Plan and to deter violations of those rules. Under the Plan, the Exchange may impose a monetary fine, instead of instituting a formal disciplinary proceeding, for a rule violation that the Exchange has found is minor in nature, but which the Exchange believes warrants a sanction more serious than a warning letter.[6] Fines under the Plan can be up to $2,500 per violation.

The Exchange proposes to add to the Plan:

- Violations of the Firm Quote Rule that are not related to commitments sent through the Intermarket Trading System (''ITS'');[7]
- Violations of the Exchange's BEST Rule; and
- Violations of the Ability to Switch MAX to Manual Execution procedures.[8]

The CHX believes that the addition of these rule violations to the Plan would enhance the enforcement efforts of the Exchange's Market Regulation Department (''Department'') by providing it with a broader range of enforcement options. Specifically, for these violations, the Department would be able to seek, in summary fashion, a disciplinary sanction that is more severe than a warning letter, but not as severe as the penalties that could result from the often time-consuming process of a formal disciplinary hearing.[9]

Under the Exchange's proposal, eligible violations of the Firm Quote Rule would face recommended fines of $500 for the first violation, $1,000 for the second violation, and $2,500 for the third and subsequent violations. Violations of the Exchange's BEST Rule and the Ability to Switch MAX to Manual Execution procedures would face recommended fines of $100 for the first violation, $500 for the second violation, and $1,000 for the third and subsequent violations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of section 6(b).[10] In particular, the CHX believes the proposed rule change is consistent with section 6(b)(5) of the Act[11] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CHX–2002–09. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

[5] 17 CFR 240.11Ac1–1.

[6] Fines under the Plan can provide an appropriate situations.

For example, where member conduct is not intentional or of such magnitude that it can be considered reckless, a fine under the Plan might be an appropriate response to a first, second or third violation by an Exchange member. The Exchange is mindful, however, that more egregious violations should not be handled through the summary proceedings authorized by the Plan.

[7] ITS-related violations of the Firm Quote Rule will be addressed in another filing, which the CHX will soon submit to the Commission for consideration.

[8] One additional change to the current rule text deletes the reference to CHX Article XX, Rule 43(d), which has been merged with the BEST Rule provision of the Exchange's rulebook. *See* Securities Exchange Act Release No. 47811 (May 7, 2003), 68 FR 25916 (May 14, 2003)(SR–CHX–2002–20).

[9] The Commission notes that certain of the rules that the CHX proposes to add to the Plan relate to market making obligations, and further notes that the Commission has indicated previously that ''only the most technical and non-substantive violations'' of a market maker's obligations should be handled pursuant to a minor rule plan. Securities Exchange Act Release No. 27878, 55 FR 13345 (April 10, 1990)(SR–NYSE–89–44).

[10] 15 U.S.C. 78(f)(b).

[11] 15 U.S.C. 78(f)(b)(5).

SR–CHX–2002–09 and should be submitted by January 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–221 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49011; File No. SR–EMCC–2003–07]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Buy-In and Sell-Out Procedures

December 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 22, 2003, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval temporarily through June 30, 2004, to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would (a) revise EMCC Rule 7, Sections 18 (Buy-Ins) and 19 (Sell-Outs) to shorten the time period when a buy-in and sell-out may be initiated and when it may be executed and (b) make conforming, technical changes to EMCC Rule 1 (Definitions and Descriptions) and Rule 7.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

When EMCC was formed, it was recognized that its buy-in and sell-out procedures should be similar to those of the International Securities Market Association (''ISMA'') because of EMCC's understanding that ISMA's procedures are generally followed by emerging market trading parties for transactions settled outside EMCC. The reason for this was to preclude EMCC members from being subject to a buy-in or sell-out by a non-EMCC member and not be able to retransmit the buy-in or sell-out to an EMCC member in the same time frame. Accordingly, EMCC's buy-in and sell-out rules followed the time periods that would be used by non-EMCC members for these processes.

EMCC recently learned that the ISMA buy-in and sell-out time frames will be changed effective January 1, 2004. If EMCC does not make corresponding changes to its rules by that date, it is possible that to avoid potential buy-in and sell-out exposure EMCC members will no longer submit transactions to EMCC. If EMCC members were to submit such transactions, they could be adversely affected due to the differences in buy-in time frames for ex-clearing trades. Accordingly, in order not to jeopardize the use of EMCC for trade processing and to not expose its members to risk, EMCC seeks to change its rules to conform to the industry change that is expected to become effective January 1, 2004. Basically, the change will shorten the time period when a buy-in and sell-out may be initiated and when it may be executed.[3] EMCC understands that the emerging markets securities industry is favorably disposed to EMCC's proposed rule change.

In addition to the above proposed changes, EMCC also seeks to make technical corrections to its Rule 1 (Definitions and Descriptions) and Rule 7 with regard to several rule and section references regarding buy-in and sell-out provisions. Rules 7 and 8 were revised in 1999,[4] but some references to those rules and to specific sections therein were not amended to reflect those changes. This filing will correct that oversight.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F)[5] of the Act, which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Because this proposed rule change aligns EMCC's buy-in and sell-out procedures with those of ISMA, EMCC should avoid any abrupt stoppage of the use of its services thereby enabling EMCC to continue to provide for the prompt and accurate clearance and settlement of transactions in emerging markets securities.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because by so approving EMCC will be able to conform its buy-in and sell-out procedures to the new industry guidelines generally used in transactions cleared outside EMCC when those industry guidelines become effective January 1, 2004. This will help to avoid confusion and other adverse

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] A copy of the proposed rule language which sets out the timing for buy-ins and sell-outs is attached as an exhibit to EMCC's filing.

[4] Securities Exchange Act Release No. 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999) [File No. SR–EMCC–98–10].

[5] 15 U.S.C. 78q–1(b)(3)(F).

consequences among EMCC's participants.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–EMCC–2003–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office and on EMCC's Web site at *http://www.e-m-c-c.com/legal/index.html*. All submissions should refer to File No. SR–EMCC–2003–07 and should be submitted January 27, 2004.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2003–07) be, and hereby is, approved on an accelerated basis through June 30, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–219 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49003; File No. SR–FICC–2003–10]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Fixed Income Clearing Corporation's Cross-Margining Agreements With the Chicago Mercantile Exchange, BrokerTec Clearing Company, and the Board of Trade Clearing Corporation and To Eliminate the Cross-Margining Agreement with the New York Clearing Corporation

December 29, 2003.

I. Introduction

On October 6, 2003, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on December 11, 2003, amended [1] proposed rule change SR–FICC–2003–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on November 21, 2003.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

FICC is seeking to amend its cross-margining agreements with the Chicago Mercantile Exchange (''CME''), BrokerTec Clearing Company (''BCC''), and the Board of Trade Clearing Corporation (''BOTCC'') and to eliminate its cross-margining agreement with the New York Clearing Corporation (''NYCC'').

1. New Cross-Margining Agreement With CME

Through its Government Securities Division (''GSD''), FICC has a cross-margining arrangement with CME.[4] FICC is proposing to terminate its existing cross-margining agreement with CME and to enter into a new cross-margining agreement with the CME (''New FICC–CME Agreement'') to reflect the fact that, as of January 2, 2004, the CME will begin clearing certain Treasury and Agency futures contracts and options on such futures contracts that are traded on the Chicago Board of Trade (''CBOT'') and that are currently cleared by BOTCC. Under the New FICC–CME Agreement, the FICC products that will be eligible for cross-margining will be Treasury securities that fall into the GSD's offset classes A through G and GCF Repo Treasury securities with equivalent remaining maturities and non-mortgage-backed Agency securities that fall into the GSD's offset classes e and f and GCF Repo non-mortgage-backed Agency securities with equivalent remaining maturities. The CME products that will be eligible for cross-margining will be of two types: (i) The products currently eligible under the existing arrangement between FICC and CME which are Eurodollar futures contracts with ranges in maturity from 3 months to 10 years and options on such future contracts cleared by CME and (ii) the CBOT products which are Two-Year Treasury Note Futures contracts and options thereon, Five-Year Treasury Note Futures contracts and options thereon, Ten-Year Treasury Note Futures contracts and options thereon, Thirty-Year Treasury Bond Futures contracts and options thereon, Five-Year Agency Note Futures contracts and options thereon, and Ten-Year Agency Note Futures contracts and options thereon to be cleared by CME.

No significant changes are being proposed to the existing FICC–CME cross-margining arrangement other than the addition of the CBOT products and certain FICC products as discussed in more detail below. The key aspects of the cross-margining arrangement, most notably, the calculation of the cross-margining reduction and the loss sharing provisions in the event of a participant default are not being amended.

2. Key Proposed Changes to the Existing Cross-Margining Agreement Between FICC and CME

The addition of the CBOT products has necessitated new definitions for ''CBOT Eligible Products,'' ''CME Eligible Products,'' and ''FICC Eligible Products,'' as well as Offset Class tables for these products in Appendix B of the agreement.

Appendix B of the FICC–CME Agreement is also being amended to include FICC's GCF Repo Treasury and non-mortgage-backed Agency products in the cross-margining arrangement.[5] By the effective date of the New FICC–CME Agreement, FICC will be margining its GCF Repo Treasury and non-mortgage-

[1] The amendment was technical in nature and did not require republication of the notice of filing.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 48796 (November 17, 2003), 68 FR 65753.

[4] Securities Exchange Act Release No. 44301 (May 11, 2001), 66 FR 28207 (May 22, 2001) [File No. SR–GSCC–00–13].

[5] This amendment is also being proposed for the BCC cross-margining arrangement as discussed below.

backed Agency products based upon the specific underlying collateral, as opposed to the current system of margining these products based upon the longest maturity of eligible underlying collateral.[6] Therefore, these GCF Repo products can now be included in the cross-margining arrangement because they will no longer be margined at a generic rate but rather at a specific rate based on the actual underlying Treasury and Agency collateral.

As is the case with the current agreement between FICC and CME, the parties provide in the New FICC–CME Agreement that they will agree from time to time in a separate writing on the disallowance factors that will be used in the cross-margining arrangement. The disallowance factors that will be used upon implementation of the new arrangement are the ones set forth as examples in Appendix B to the New FICC–CME Agreement. The disallowance factors between FICC eligible products and CME eligible products (*i.e.*, Eurodollar products) have not changed. A new disallowance factor table has been added for cross-margining of FICC eligible Treasury and Agency products with CBOT Treasury and Agency eligible products.[7]

Appendix C of the current agreement, which sets forth the methodology for converting CME eligible products into Treasury cash equivalents for purposes of ultimately calculating the cross-margining reduction, has been made into Appendix C1, and a new Appendix C2, which contains the methodology for converting the CBOT eligible products into Treasury cash equivalents, has been added. This methodology is identical to the methodology contained in the BOTCC and BCC cross-margining agreements.

The existing agreement between FICC and CME provides for a ''Maximization Payment'' which is a cross-guaranty provision that sets forth the mechanism for a clearing organization with a remaining surplus after all guaranty payments in relation to cross-margining have been made (''Aggregate Net Surplus'') to distribute funds to one or more cross-margining partners with remaining losses. The New FICC–CME Agreement will make it clear that: (i) The Maximization Payment is also a guaranty payment (albeit outside of cross-margining, arising out of the ''Maximization Payment Guaranty'') and (ii) the defaulting member would have a reimbursement obligation with respect to such payment (''Maximization Reimbursement Obligation''). This means that should a clearing organization become obligated to pay the Maximization Payment, it may rely on the defaulting member's collateral to do so.[8]

A provision has been added to the New FICC–CME Agreement to take into account that a regulator or other entity having supervisory authority over FICC or CME may for safety and soundness purposes direct the clearing organization not to liquidate a defaulting member or to partially liquidate such member. In order to prevent the affected clearing organization from being penalized under the agreement for failing to liquidate or partially liquidating the member in this type of situation, the last two paragraphs of Section 7(d) of the New FICC–CME Agreement will provide that the affected clearing organization would be deemed to have a cross-margin gain equal to the base amount of the guaranty (*i.e.*, cross-margining reduction) or a pro rated amount of the base amount of the guaranty in a partial liquidation scenario.

A sentence has been added to Section 7(h) making clear that the clearing organizations have security interests in the ''Aggregate Net Surplus,'' a large component of which would be the collateral and proceeds of positions of a defaulting member, as security for any reimbursement obligation including any maximization reimbursement obligation that may arise on the part of a defaulting member.

Language has been added to the cross-margining participant agreements in Appendices D and E in order to further protect the clearing organizations by making clear that the clearing organizations have a security interest in the Aggregate Net Surplus and that a participant will have a reimbursement obligation in the event that a clearing organization becomes obligated to make a maximization payment. Participants in the current arrangement between FICC and CME and those in the arrangement between FICC and BOTCC to the extent they are not the same are being asked to reexecute the revised participant agreements in order to make them subject to the provisions of the New FICC–CME Agreement.[9]

3. Key Proposed Changes to FICC's Cross-Margining of CBOT Products

Because FICC is currently cross-margining its products with certain CBOT products pursuant to its agreement with BOTCC and because these CBOT products will be cross-margined pursuant to the proposed New FICC–CME Agreement, it is important to note the key differences between the cross-margining of the CBOT products under the existing arrangement with BOTCC and under the proposed new arrangement with the CME.

The minimum margin factor under FICC's cross-margining arrangement with BOTCC is 50 percent. FICC and CME have agreed to a minimum margin factor of 25 percent to apply to the cross-margining of CBOT products versus FICC products. This is the same minimum margin factor as is used in the current cross-margining arrangement with the CME with respect to the eligible Eurodollar products and is the same minimum margin factor used in the arrangement with BCC.

The New FICC–CME Agreement provides for inter-offset class cross-margining whereas the BOTCC arrangement is limited to intra-offset class cross-margining. The new agreement is consistent with the approach in the existing arrangements between FICC and both CME and BCC.

The current agreement between FICC and CME provides that in order to determine the gain or loss from the liquidation of the positions that were cross-margined resulting from a default

[6] Because of a previous inability to obtain timely data on the actual instruments posted in support of GCF Repo positions, the GSD has calculated affected members' clearing fund requirements based upon the assumption that collateral providers have assigned to each generic CUSIP the most volatile (*i.e.*, the longest maturity) collateral eligible. The GSD has been in the process of developing improvements to the current margining methodology. By the effective date of the proposed rule change, the GSD will be able to identify the specific CUSIP posted in calculating a member's clearing fund requirement related to its Treasury and Agency GCF Repo activity.

[7] FICC has computed and tested disallowance factors that will be applicable to each potential pair of positions being offset.

[8] The new guaranty provisions with respect to the Maximization Payment Guaranty will be identical to the ones in the current cross-margining agreement between FICC and BCC. In order to protect the clearing organizations in the event that a court determines that any amount of a Maximization Reimbursement Obligation may not be recovered by the clearing organization that made a Maximization Payment pursuant to a Maximization Payment Guaranty, a provision has been added (Section 8C(c)) to the New FICC–CME Agreement to provide that the payee clearing organization will be expected to return that amount. This protective provision is also in the BCC cross-margining agreement.

[9] Cross-margining is available to any FICC GSD netting member (with the exception of inter-dealer broker netting members) that is, or that has an affiliate that is, a member of a Participating CO. The FICC member (and its affiliate, if applicable) sign an agreement under which it (or they) agree to be bound by the cross-margining agreement between FICC and the Participating CO and which allows FICC or the Participating CO to apply the member's (or its affiliate's) margin collateral to satisfy any obligation of FICC to the Participating CO (or vice versa) that results from a default of the member (or its affiliate). Ownership of 50 percent or more of the common stock of an entity indicates control of the entity for purposes of the definition of ''affiliate.''

of a member, only the proceeds from the side of the market that was offset pursuant to the agreement at the last margin cycle are considered. In the New FICC–CME Agreement, this approach will be extended to the CBOT products in order to provide consistency in the liquidation methods.

4. Amendments 1, 2, and 3 to the FICC–BCC Cross-Margining Agreement

FICC is proposing to amend its cross-margining agreement with BCC with Amendment 3 to the agreement.[10] Amendment 3 will (i) add FICC's GCF Repo Treasury and non-mortgage-backed Agency products to the arrangement, (ii) add FICC's non-mortgage-backed Agency offset classes e and f, and (iii) amend the contingency procedures between the clearing organizations (contained in Appendix I of the agreement) to provide that FICC will not wait past 12 a.m. Eastern time for the BCC cross-margining file in order to run its cross-margining system. With respect to (ii), FICC has determined that even though BCC does not currently clear non-mortgage-backed Agency futures, the parties can still cross-margin FICC's Agency products against BCC's Treasury products given that the agreement provides for inter-offset class cross-margining using the appropriate correlation factors. With respect to (iii), the operational procedures provide that FICC will wait until 3:00 a.m. Eastern time for the BCC file which is the same cut-off time for all of its other cross-margining partners. However, FICC has determined that the 3:00 a.m. Eastern time cut-off, which is significantly later than the GSD's normal cross-margining processing time, should only be used for extreme situations where not including a particular file would be disruptive to members. Currently, this would not be anticipated to be the case for a BCC file because of BCC's files relatively low historical impact.[11] Therefore, FICC has determined that it would be more prudent from a risk management perspective to adopt a cut-off time of 12:00 a.m. Eastern time for receipt of BCC files.

As part of this proposed rule change filing, FICC will include Amendments 1 and 2 that were previously made with respect to its existing cross-margining agreement with BCC. The purpose of Amendment 1 was to update the list of products being cross-margined. The purposes of Amendment 2 were to remove references to the cross-margining agreement with NYCC from Appendix A in which the parties are required to list other outstanding cross-margining arrangements and to update the notice provision.

5. Amendments 1 and 2 to the FICC–BOTCC Cross-Margining Agreement

As in the case of the BCC agreement, FICC will include as part of this proposed rule change filing Amendments 1 and 2 that were previously made with respect to its existing cross-margining arrangement with BOTCC.[12] The purposes of Amendment 1 were to update the list of products being cross-margined, add an appendix setting forth operational contingency procedures, clarify procedures to be used if one clearing organization discovers a calculation error, correct cited Bankruptcy Code language, correct language in one of the participant agreements, and refine the timing of the effectiveness of changes to the cross-margining reduction. The purpose of Amendment 2 was to remove references to the cross-margining agreement with NYCC from Appendix A.

6. Removal of NYCC Cross-Margining Agreement From the GSD's Rules

FICC is removing its cross-margining agreement with NYCC[13] from the GSD's rules. That arrangement has been dormant for some time and the parties have agreed that should they determine to reinstitute cross-margining, they will enter into a new cross-margining agreement that will be similar to FICC's other cross-margining agreements. At that time, FICC would file the appropriate proposed rule change with the Commission.

[10] Securities Exchange Act Release No. 45656 (March 27, 2002), 67 FR 15646 (April 2, 2002) [File No. SR–GSCC–2002–01].

[11] The operational and contingency procedures contained in the FICC–BCC agreement provide that in the event FICC does not receive BCC's file by the cut-off time, FICC will calculate the applicable cross-margining reductions assuming that BCC submitted a file with no positions available for cross-margining which may result in margin calls for the affected participants by both FICC and BCC. These margin calls would not be disruptive to members because the cross-margining reductions in the program with the BCC are not anticipated to be large amounts.

[12] FICC currently has a cross-margining agreement in place with BOTCC through which certain CBOT products are cross-margined with certain FICC products. Securities Exchange Act Release No. 45335 (January 25, 2002), 67 FR 4768 (January 31, 2001) [File No. SR–GSCC–2001–03]. BOTCC recently announced that it will become the clearing corporation for Eurex. In the next few weeks, FICC will determine the status of its cross-margining arrangement with BOTCC and will submit a proposed rule change filing addressing changes to the existing agreement, if necessary.

[13] Securities Exchange Act Release No. 41766 (August 19, 1999), 64 FR 46737 (August 26, 1999) [File No. SR–GSCC–98–04].

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest.[14] The Commission finds that FICC's proposed rule change is consistent with this requirement because it continues FICC's cross-margining program which provides members with significant benefits, such as greater liquidity and more efficient use of collateral in a prudent manner, and enhances FICC's overall risk management process.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2003–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–220 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49009; File No. SR–ISE–2003–39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Extension of a Linkage Fee Pilot Program

December 30, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2003, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend until July 31, 2004 the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage (''Linkage''). Currently pending before the Commission is a filing to make such fees permanent.[3]

The proposed fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for six months the pilot program establishing ISE fees for Principal (''P'') Orders and Principal Acting as Agent (''P/A'') Orders executed through Linkage. The fees currently are effective for a pilot program scheduled to expire on January 30, 2004,[4] and this filing would extend the fees through July 31, 2004. The three fees the ISE charges for P and P/A orders are: The basic execution fees for trading on the ISE, which range from $.12 to $.21 per contract/side depending on average daily trading volume on the Exchange; a $.10 surcharge per contract/side for trading certain licensed products; and a $.03 comparison fee per contract/side (collectively ''Linkage fees''). These are the same fees that all ISE Members pay for non-customer transactions executed on the Exchange.[5] The ISE does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

In the Permanent Fee Filing, the ISE discusses in detail the reasoning why it believes it is appropriate to charge fees for P and P/A Orders executed through Linkage. In sum, market makers on competing exchanges can match a better price on the ISE; they never are obligated to send orders to the ISE through Linkage. However, if such market makers do seek the ISE's liquidity, whether through conventional orders or through the use of P Orders or P/A Orders, the Exchange believes it is appropriate to charge our Members the same fees levied on other non-customer orders. The ISE appreciates that there has been limited experience with Linkage and that the Commission is continuing to study Linkage in general and the effect of fees on trades executed through Linkage. Thus, this filing would extend the status quo for ISE's Linkage fees for six months while the Commission considers the Permanent Fee Filing.

2. Statutory Basis

The ISE believes that the basis for this proposed rule change is the requirement under Section 6(b)(4) under the Act[6] that an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. As discussed in more detail above, the ISE believes that this proposed rule change will equitably allocate fees by having all non-customer users of ISE transaction services pay the same fees. If the ISE were not to charge Linkage fees, the Exchange's fees would not be equitable, in that ISE Members would be subsidizing the trading of their competitors, all of whom access the same trading services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Moreover, the ISE believes that failing to adopt the proposed rule change would impose a burden on competition by requiring ISE Members to subsidize the trading of their competitors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–ISE–2003–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by January 27, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[7] and, in particular, with the requirements of section 6(b) of the Act[8] and the rules

[3] *See* File No. SR–ISE–2003–30 (the ''Permanent Fee Filing'').

[4] *See* Securities Exchange Act Release No. 47719 (April 23, 2003), 68 FR 22764 (April 29, 2003) (SR–ISE–2003–11).

[5] The ISE charges these fees only to its Members, generally firms who clear P and P/A Orders for market makers on the other linked exchanges.

[6] 15 U.S.C. 78f(b)(4).

[7] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[9] which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees, and other charges among its members other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2004 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the ISE and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–ISE–2003–39) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–216 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48997; File No. SR–NASD–2003–161]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Nasdaq Official Opening Price

December 29, 2003.

On October 28, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Nasdaq Official Opening Price that would be made available for wholly voluntary use by NASD members and the public. The proposed rule change was published for comment in the **Federal Register** on November 26, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 15A of the Act[5] in general, and furthers the objectives of Section 15A(b)(6)[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Specifically, the Commission believes that Nasdaq's proposal may result in the public dissemination of information that more accurately reflects the trading in a particular security on Nasdaq at the open.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change (SR–NASD–2003–161) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–224 Filed 1–5–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48810 (November 19, 2003), 68 FR 66518.

[4] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4580]

Bureau of Educational and Cultural Affairs; Middle East Partnership Initiative (MEPI) U.S. Business Internship Program for Young Middle Eastern Women

ACTION: Correction to proposal submission date.

The MEPI U.S. Business Internship Program for Young Middle Eastern Women was announced in Public Notice 4575 published on Monday, December 29, with an incorrect proposal submission date. The correct date should read, ''February 17, 2004''. All other program information remains the same.

SUPPLEMENTARY INFORMATION: Interested U.S. organizations should contact Robert Greenan at 202–619–5437 for additional information.

The Middle East Partnership Initiative (MEPI) U.S. Business Internship Program for Young Middle Eastern Women was announced in the **Federal Register**, Volume 68, Number 248, on December 29, 2003.

Dated: December 30, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–228 Filed 1–5–04; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Proposed Measure and Opportunity for Public Comment Pursuant to Section 421 of the Trade Act of 1974: Certain Ductile Iron Waterworks Fittings From the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed measure; request for comments.

SUMMARY: The United States International Trade Commission (ITC) has determined, pursuant to section 421(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2451(b)(1)), that certain ductile iron waterworks fittings[1] from the People's

[1] For purposes of its investigation, the ITC considered certain ductile iron waterworks fittings to consist of cast pipe or tube fittings of ductile iron (containing 2.5 percent carbon and over 0.02 percent magnesium or magnesium and cerium, by weight) with mechanical, push-on (rubber

Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. Pursuant to section 421(h)(1) of the Trade Act, the United States Trade Representative (USTR) is publishing notice of proposed restrictions with respect to imports of the subject ductile iron waterworks fittings from China. USTR invites domestic producers, importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed restrictions and whether they would be in the public interest. USTR also invites interested parties to participate in a public hearing (if requested).

DATES: Requests for USTR to hold a public hearing are due by January 20, 2004. Written comments and requests to testify at any public hearing are due by January 22, 2004. If a request for USTR to hold a public hearing is received, the hearing will be held on February 2, 2004.

ADDRESSES: *Submissions by electronic mail: FR0409@ustr.gov. Submissions by facsimile:* Sandy McKinzy, USTR, at (202) 395–9672.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and holding of a public hearing, contact Sandy McKinzy, USTR, telephone (202) 395–9483, facsimile (202) 395–9672. Other questions regarding the subject of this notice should be addressed to Terrence J. McCartin, Office of North Asian Affairs, USTR, telephone (202) 395–3900, or María L. Pagán, Office of General Counsel, USTR, telephone (202) 395–7305.

SUPPLEMENTARY INFORMATION:

1. The ITC Investigation and Section 421

Following receipt of a petition filed on September 5, 2003, on behalf of McWane, Inc., the ITC instituted investigation No. TA–421–4, under section 421(b) of the Trade Act (19 U.S.C. 2451(b)) to determine whether the subject ductile iron waterworks fittings from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. In addition, the petitioner sought provisional relief under section 421(i) of the Trade Act (19 U.S.C. 2451(i)), alleging that critical circumstances exist such that a delay in taking action under the statute would cause damage to the relevant domestic industry which would be difficult to repair. On October 16, 2003, the ITC made a negative critical circumstances determination and continued its investigation. The ITC made an affirmative market disruption determination on December 4, 2003, and transmitted a report on its determination, as well as its remedy proposals, to USTR on December 24, 2003. The views of the ITC, including its remedy proposals, and the ITC staff report are available on the ITC's Web site (*http://www.usitc.gov*) and are contained in USITC Publication 3657 (December 2003), entitled ''Certain Ductile Iron Waterworks Fittings from China''. A copy of that publication can be obtained from the ITC after January 14, 2004, by faxing a request to (202) 205–2104 or calling (202) 205–1809.

Following an affirmative determination by the ITC, and pursuant to Section 421(h) of the Trade Act, USTR is required to make a recommendation to the President concerning what action, if any, to take to remedy the market disruption. Within 15 days after receipt of USTR's recommendation, the President is required to provide import relief unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States. (Section 421(k)) Prior to making a recommendation, USTR is required to publish notice of any proposed measures and of the opportunity to comment.

2. Proposed Measure and Opportunity for Comment

The ITC recommended that the President impose a tariff-rate quota on imports of the subject ductile iron waterworks fittings from China for a three-year period as follows: A 50 percent tariff, in addition to the current rate of duty, on imports exceeding 14,324 short tons in the first year; a 40 percent tariff, in addition to the current rate of duty, on imports exceeding 15,398 short tons in the second year; and a 30 percent tariff, in addition to the current rate of duty, on imports exceeding 16,553 short tons in the third year. The ITC further recommended that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports. USTR proposes this remedy for further consideration by domestic producers, importers, exporters, and other interested parties, and invites any of these parties to submit their views and evidence on the appropriateness of the proposed remedy and whether it would be in the public interest. In addition, USTR invites comments on other possible actions, including: Imposition of a tariff-rate quota on the subject imports from China, with an in-quota volume, out-of-quota tariff rate, and/or period different from the ITC recommendation; imposition of an additional duty on imports of the subject imports from China; imposition of a quota on the subject imports from China; an import monitoring mechanism; or no import relief (pursuant to a determination under Section 421(k) of the Trade Act regarding the national economic interest or national security). In commenting on possible actions, interested parties are requested to address: (i) The short- and long-term effects that implementation of the proposed action is likely to have on the domestic ductile iron waterworks fittings industry, other domestic industries, and downstream consumers, and (ii) the short- and long-term effects that not taking the proposed action is likely to have on the domestic ductile iron waterworks fittings industry, its workers, and other domestic industries or communities.

An interested party may request that USTR hold a public hearing, which request must be received by January 20, 2004. Written comments, as well as requests to testify at any public hearing, must be received by January 22, 2004, and should be submitted in accordance with the instructions below. Parties that have requested to testify at any public hearing will be informed if a hearing is to be held. In addition, information on any public hearing may be obtained by contacting Sandy McKinzy at (202) 395–9483. If a public hearing is requested, it will be held on February 2, 2004, at 9:30 a.m. in Rooms 1 and 2, 1724 F Street, NW., Washington, D.C. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-

compression) or flanged joints attached. Included within this definition are fittings of all nominal diameters and of both full-bodied and compact designs. The imported products are provided for in statistical reporting number 7307.19.3070 of the Harmonized Schedule of the United States (HTS).

mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: ''Ductile Iron Waterworks Fittings'' followed by (as appropriate) ''Written Comments'', ''Request for Public Hearing'', or ''Request to Testify''. Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries will be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

Charles Freeman,

Deputy Assistant United States Trade Representative, Office of North Asian Affairs.

[FR Doc. 04–214 Filed 1–5–04; 8:45 am]

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242) requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the ''Special 301'' provisions of the Trade Act.) The USTR is required to determine which of these countries should be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a priority foreign country are normally the subject of an investigation under the section 301 provisions of the Trade Act. Section 182 of the Trade Act also contains a special rule for the identification of actions by Canada affecting U.S. cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under section 182 of the Trade Act.

DATES: Submissions must be received on or before 12:00 noon on Friday, February 13, 2004.

ADDRESSES: Comments should be sent to Mark Wu, Director for Intellectual Property, and/or Sybia Harrison, Special Assistant to the Section 301 Committee, at the following e-mail address: *FR0408@ustr.gov,* with ''Special 301 Review: [Country Name]'' in the subject line. Only electronic submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: Mark Wu, Director for Intellectual Property, (202) 395–6864; Victoria Espinel or Daniel Mullaney, Assistant General Counsels, (202) 395–7305, Office of the United States Trade Representative. In the event that none of the above are available, questions should be directed to Claude Burcky, Deputy Assistant USTR for Intellectual Property, Office of the United States Trade Representative, (202) 395–6864.

SUPPLEMENTARY INFORMATION: Pursuant to section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the section 301 provisions of the Trade Act.

USTR may not identify a country as a Priority Foreign Country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

USTR requests that, where relevant, submissions mention particular regions, provinces, or states of a country whose act, policy, or practice deserve special highlighting in this year's report. Such mention may be positive or negative, so long as it deviates from the general norm in that country.

Section 182 contains a special rule regarding actions of Canada affecting U.S. cultural industries. The USTR is obligated to identify any act, policy, or practice of Canada that affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any such act, policy, or practice so identified shall be treated the same as an act, policy, or practice that was the basis for a country's identification as a Priority Foreign Country under section 182(a)(2) of the Trade Act, unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, *i.e.*, no later than April 30, 2004.

Requirements for comments: Comments should include a description of the problems experienced and the effect of the acts, policies, or practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies, or practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

Comments must be in English and may only be submitted electronically. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P'' or ''BC'' should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments should be sent to Mark Wu, Director for Intellectual Property, and Sybia Harrison, Special Assistant to the Section 301 Committee, at the following e-mail address: *FR0408@ustr.gov,* with ''Special 301 Review: [Country Name]'' in the subject line. Only electronic submissions will be accepted.

Public inspection of submissions: Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Amber Cottle,

Acting Assistant United States Trade Representative for Services, Investment, and Intellectual Property.

[FR Doc. 04–213 Filed 1–5–04; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The ATSRAC will meet January 21 and 22, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: Miami Airbus Training Center, 4355 NW 36th Street, Miami Springs, Florida 33166.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee. The FAA will hold the meeting at the location listed under the **ADDRESSES** heading of this notice. The agenda topics for the meeting include—

- Status reports of the tasks (68 FR 31741, May 28, 2003) assigned to Harmonization Working Groups 11, 12, and 13;
- Discussion of the FAA's review of aging airplane rulemaking initiatives;
- Discussion of electrical wiring in relation to master minimum equipment lists; and
- Presentation of Awareness Training video by Aircraft Electronics Association.

The meeting is open to the public; however, attendance will be limited by the size of the meeting room. The FAA will make the following services available if you request them by January 14, 2004:

- Teleconferencing;
- Sign and oral interpretation; and
- A listening device.

Individuals using the teleconferencing service and calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges. To arrange for any of these services, contact the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will be considered if time allows.

Issued in Washington, DC, on December 30, 2003.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 04–227 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from Monday, January 26, from 1 p.m. to 4:30 p.m., and Tuesday, January 27 to Wednesday, January 28, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Northern California TRACON, 11375 Douglas Road, Mather, California, 95655.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Clayborn, Executive Director, ATPAC, Air Traffic Planning and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby give of a meeting of the ATPAC to be held Monday, January 26, from 1 p.m. to 4:30 p.m., and Tuesday, January 27, to Wednesday, January 28, from 9 a.m. to 4:30 p.m.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading or terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.

6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons persons desiring to present oral statement should notify the person listed above not later than January 16, 2004. The next quarterly meeting of the FAA ATPAC is planned to be held from April 5–8, 2004, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 17, 2003.

David W. Madison,

Acting Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 04–243 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–03–C–00–CKB To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Harrison-Marion Regional Airport, Clarksburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Harrison-Marion Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 5, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airports District Office, 176 Airport Circle, Room 101, Beaver, WV 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jim Griffith, Airport Manager, of the Harrison-Marion Regional Airport at the following address: 2000 Aviation Way, Bridgeport WV 26330.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Benedum Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew DiGiulian, Civil Engineer, Beckley Airports District Office, 176 Airport Circle, Room 101, Beaver, WV 25813, (304) 252–6216. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at Harrison-Marion Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 17, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Benedum Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 31, 2004.

The following is a brief overview of the application.

Proposed charge effective date: May 1, 2004.

Proposed charge expiration date: May 1, 2054.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $2,920,641.

Brief description of proposed project(s):

—Terminal Modifications
—Construct De-Icing Containment Facility
—Construct Run-Up Pad
—Install Segmented Circle/Beacon
—Runway Extension (Land Acquisition)
—Runway Extension (Construction)

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: AEA–610, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Benedum Airport Authority.

Issued in Beckley, West Virginia, on December 17, 2003.

Larry F. Clark,

Manager, Beckley Airports Field Office, Eastern Region.

[FR Doc. 04–244 Filed 1–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections; as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Department of the Treasury is soliciting comments concerning the Terror Risk Insurance Survey.

DATES: Written comments should be received on or before March 8, 2003 to be assured of consideration.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Lucy Huffman, Office of Economic Policy, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *surveycomments@do.treas.gov.* All comments should be captioned with ''Terror Risk Insurance Survey Comments.'' Please include your name, affiliation, address, email, address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Linda Moeller, Economist, Office of Economic Policy, 202–622–0474, at *Linda.Moeller@do.treas.gov;* or Lucy Huffman, Economist, Office of Economic Policy, 202–622–0198, at *Lucy.Huffman@do.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Terror Risk Insurance Survey.

Abstract: Section 108(d) of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (TRIA) requires the Secretary of the Treasury (Treasury) to assess the effectiveness of the Terrorism Risk Insurance Program (Program) established under TRIA and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program in 2005, and the availability and affordability of such insurance for various policyholders, including

railroads, trucking and public transit. To help carry out this charge, Treasury will implement a broad national multi-period survey of the availability and price of terrorism risk coverage. The survey will collect data on terrorism risk coverage in worker's compensation, commercial property, and other casualty insurance included under TRIA and data on reinsurance for terrorism risk.

Current Actions: The survey data will be collected in three waves. The first wave of data collection is being undertaken during the fall and winter of 2003 on the basis of an emergency information collection submission (OMB number 1505–0193). The second and third waves will be collected in early 2004 and 2005, respectively.

Pursuant to the Confidential Information Protection and Statistical Efficiency Act of 2002, Pub. L. 107–347, 116 Stat. 2962, codified at 44 U.S.C. 3501, the data collected for this project shall be used for exclusively statistical purposes, that is, for ''* * * the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups'' The data shall be gathered at arm's length from the Government. The survey contractor, Westat, shall assemble the data into nationally representative sets of longitudinal micro data in conformity with OMB and Treasury data quality standards. The Contractor pledges to Treasury and to survey respondents that they will safeguard the confidentiality of survey responses. No individual company will be identified, directly or indirectly, in reports or publications.

Type of Review: New.

Affected Public: Business or other for-profit/Not-for-profit institutions/Farms/State Local or Tribal Government.

Estimated Number or Respondents: 10,350.

Estimated Total Annual Burden Hours: 13,500 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: December 31, 2003.

Mark Warshawsky,

Acting Assistant Secretary for Economic Policy, U.S. Treasury Department.

[FR Doc. 04–205 Filed 1–5–04; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 30, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 5, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1534.

Regulation Project Numbers: REG–252936–96 Final.

Type of Review: Extension.

Title: Rewards for Information Relating to Violations and Internal Revenue Laws.

Description: The regulations relate to rewards for information that results in the detection and punishment of violations of the Internal Revenue Laws.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30,000 hours.

OMB Number: 1545–1587.

Form Number: None.

Type of Review: Revision.

Title: 2004 Electronic Tax Administration Practitioner Tracking Study.

Description: This survey is being conducted to measure changes to baseline measures of Practitioner knowledge and acceptance of Electronic Tax Administration program and to provide the IRS with quantitative data and analysis to assist with making policy decisions on how to better communicate with Practitioners to expand use of e-file.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Burden Hours Respondent: 1 hour, 17 minutes.

Estimated Total Reporting Burden: 1,797 hours.

OMB Number: 1545–1823.

Form Number: None.

Type of Review: Extension.

Title: e-Services Registration TIN Matching—Application and Screens for TIN Matching Interactive.

Description: e-Services is a system which will permit the Internal Revenue Service to electronically communicate with third party users to support electronic filing and resole tax administration issues for practitioners, payers, states and Department of Education Contractors Registration is required to authenticate users that plan to access e-Services products. This system is necessary outgrowth of advanced information and communication technologies. TIN Matching is one of the products available through e-Services offered via the internet and for income subject to backup withholding to match TIN Matching allows a payer, or their authorized agent, who is required to file information returns for income subject to backup withholding to match TIN/Name combinations through interactive and bulk sessions. It is necessary for payers to apply online to use TIN Matching, and the information requested in the application process is used to validate them systematically as payers of the correct types of income.

Respondents: Business or other for-profit, Not-for-profit-institutions.

Estimated Number of Respondents: 375,000.

Estimated Burden Hours Respondent:

e-Services product	Estimated time to complete (minutes)
Registration	20
TIN Matching Application	10
TIN Matching Interactive Session	10

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,590.000 hours.

Clearance Officer: Robert M. Coar, Internal Revenue Service, Room 6411,

1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3579.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–206 Filed 1–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 23, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 5, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1448.

Regulation Project Numbers: EE–81–88 Final.

Type of Review: Extension.

Title: Deduction for Transfers of Property.

Description: These regulations concern the Secretary's authority to require the filing of an information return under Code section 6041 and expand the requirement to furnish forms to certain corporate service providers.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1452.

Regulation Project Number: FI–43–94 Final.

Type of Review: Extension.

Title: Regulations under section 1258 of the Internal Revenue Code of 1986; Netting Rule for Certain Conversion Transactions.

Description: Section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. This regulation provides that certain gains and losses may be netted for purposes of determining the amount of gain.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms.

Estimated Number of Recordkeepers: 50,000.

Estimated Burden Hours Recordkeeper: 6 minutes.

Estimated Total Recordkeeping Burden: 5,000 hours.

OMB Number: 1545–1582.

Regulation Project Number: REG–209373–81 Final.

Type of Review: Extension.

Title: Election to Amortize Start-Up Expenditures for Active Trade or Business.

Description: The information is needed to comply with section 195 of the Internal Revenue Code, which requires taxpayers to make an election in order to amortize start-up expenditures. The information will be used for compliance and audit purposes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 150,000.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of Response: Other (one-time election).

Estimated Total Reporting Burden: 37,500 hours.

OMB Number: 1545–1583.

Regulation Project Number: REG–209322–82 Final.

Type of Review: Extension.

Title: Return of Partnership Income.

Description: Information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses, deductions, or credits from the taxpayer's interest in the partnership.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1702.

Form Number: IRS Form 8870.

Type of Review: Extension.

Title: Information Return for Transfers Associated with Certain Personal Benefit Contracts.

Description: Section 170(c) charitable organizations or section 664(d) charitable remainder trusts that paid premiums after February 8, 1999, on certain ''personal benefit contracts'' must file Form 8870.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—10 hr., 17 min.

Learning about the law or the form—2 hrs., 23 min.

Preparing, copying, assembling, and sending the form to the IRS—2 hrs., 40 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 74,200 hours.

Clearance Officer: Robert M. Coar, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3579.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–207 Filed 1–5–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
January 6, 2004

Part II

Department of Homeland Security

Coast Guard

33 CFR Parts 148, 149, and 150
Deepwater Ports; Temporary Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 148, 149, and 150

[USCG–1998–3884]

RIN 1625–AA20 (formerly RIN 2115–AF63)

Deepwater Ports

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: This temporary interim rule revises regulations adopted in 1975 to implement the Deepwater Port Act of 1974. It updates and streamlines those regulations in accordance with the 1996 Deepwater Port Modernization Act. It also extends the deepwater port regulations to the natural gas deepwater ports authorized by Congress in the Maritime Transportation Security Act of 2002. This temporary interim rule will be followed by a final rule as soon as practicable.

DATES: This temporary interim rule is effective from January 6, 2004, until October 1, 2006. Comments and related material must reach the Docket Management Facility on or before July 5, 2004. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 5, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–1998–3884 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal rulemaking portal: *http://www.regulations.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Kevin Tone, Vessel and Facility Operating Standards Division (G–MSO–2), Coast Guard, telephone 202–267–0226. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Effective Dates

This temporary interim rule takes effect January 6, 2004. The Coast Guard finds that postponing the effective date of this temporary interim rule is unnecessary, because the immediate impact of changes that otherwise would take effect 30 days after publication are administrative in nature and have been the subject of permissible consultation with affected parties. The Coast Guard further finds that postponing the effective date of this temporary interim rule is contrary to the public interest in the prompt processing of deepwater port licensing applications. Therefore, the Coast Guard finds that good cause exists under 5 U.S.C. 553(d)(3) for this temporary interim rule to take effect upon publication. The effective period of this temporary interim rule ends October 1, 2006. The Maritime Transportation Security Act of 2002 (MTSA), Public Law 107–295, Title I, 106 (e)(2), provides in part: ''The Secretary may issue an interim final rule as a temporary regulation implementing this section * * * as soon as practicable after the date of enactment of this section, without regard to the provisions of chapter 5 of title 5, United States Code [the Administrative Procedure Act or APA].'' Although MTSA itself sets no time limit on the temporary regulation, we think a self-imposed termination date of October 1, 2006, is in keeping with the spirit of the act.

Public Participation and Request for Comments

This temporary interim rule has been issued without public notice and comment on certain provisions (see the preceding discussion of ''Effective Dates''). The provisions being added without previous public notice and comment concern natural gas deepwater ports. Public notice for other aspects of this rulemaking was provided in the notice of proposed rulemaking (NPRM) issued May 30, 2002 (67 FR 37920), and the public was given several months to comment on that NPRM.

Section 106(e)(3) of MTSA requires publication of a final rule as soon as practicable. The final rule is not exempt from the notice and comment provisions of the APA. We intend to issue a final rule after providing opportunity for public comment on this temporary interim rule, and we may revise the final rule in light of those comments. We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–1998–3884), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary interim rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. If you wish, you may submit a request for a public meeting to the Docket Management Facility at the address under **ADDRESSES.** Explain why you think a meeting would be useful. If we determine that a meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On May 30, 2002, we published in the **Federal Register** (67 FR 37920) a notice of proposed rulemaking entitled ''Deepwater Ports,'' and announced a public comment period ending July 29, 2002. Subsequently, we published a **Federal Register** notice (67 FR 53764, August 19, 2002) extending the public comment period to September 18, 2002. The comments we received are discussed in ''Discussion of Comments and Changes,'' below. No public hearing was held in connection with the NPRM.

Related Rulemaking

The rule proposed in the May 30, 2002, NPRM contained numerous references to Coast Guard rules proposed in an earlier NPRM (64 FR 68416, December 7, 1999) titled ''Outer Continental Shelf Activities.'' The Outer Continental Shelf (OCS) Activities rulemaking (USCG–1998–3868; RIN 1625–AA18, formerly RIN 2115–AF39) has not been completed. Therefore, instead of retaining the 2002 NPRM's references to the 1999 NPRM's proposed OCS provisions, we revised the Deepwater Ports rules so that they now contain detailed provisions that are based on the 1999 OCS NPRM's provisions. In many cases, we have modified those provisions so that they are substantively different from what we proposed in 1999. We consider the Deepwater Ports temporary interim rule to represent a logical outgrowth of the 2002 Deepwater Ports NPRM and the 1999 OCS Activities NPRM, modified to reflect MTSA's addition of natural gas deepwater ports as well as the public comments we received on both NPRMs. These detailed provisions primarily appear in those portions of the temporary interim rule concerning lifesaving and firefighting requirements, maintenance procedures, and workplace safety and health requirements.

One commenter on the 2002 NPRM said we should not couple Deepwater Ports rulemaking to the OCS Activities rulemaking without a further opportunity for public comment and that in the meantime we should rely on existing OCS regulations, while another commenter said that aligning the two rulemakings was appropriate. As explained in ''Public Participation and Request for Comments'' and in the preceding paragraph, there will be further opportunity for public comment before a final rule is issued, and we have modified OCS Activities provisions, for use in this temporary interim rule, in light of public comments that we have previously received on both the Deepwater Ports and OCS Activities rulemakings.

Background and Purpose

A detailed discussion of this rulemaking's background and objectives can be found in the 2002 NPRM. In summary, our goal has been to modernize existing deepwater port regulations in light of experience, and in compliance with the Deepwater Port Modernization Act (DPMA; Public Law 104–324, title V, sec. 501–508, October 19, 1996), which amended the Deepwater Port Act of 1974 (DWPA; 33 U.S.C. 1501–1524). DPMA expressed a general interest in ensuring fair treatment for deepwater ports relative to other modes for importing or transporting oil; in eliminating unnecessary regulation and promoting innovation, flexibility, and efficiency; and in encouraging the construction of additional deepwater ports.

On November 25, 2002, the Maritime Transportation Security Act (MTSA) of 2002 was signed into law. MTSA amended DWPA, which as enacted in 1974 applied only to deepwater ports for oil, to cover natural gas facilities as well. It also called for the development of implementing regulations ''as soon as practicable,'' and authorized publication of a temporary interim rule without regard to the usual public notice and comment provisions of the Administrative Procedure Act.

The proposed rule published in the 2002 NPRM has now been revised to reflect MTSA's amendment of DWPA to include natural gas facilities, and to reflect public comments that we received in response to the NPRM. We also changed many provisions taken from the 1999 OCS Activities NPRM (*see* ''Related Rulemaking,'' above). We have tried to align the rules for natural gas deepwater ports with existing rules for facilities transferring (liquefied) natural gas (33 CFR part 127).

After MTSA's enactment, the Coast Guard and the Maritime Administration (MARAD) received two applications for the licensing of natural gas deepwater ports. As we announced in the **Federal Register**, those applications (Port Pelican LLC Deepwater Port, 67 FR 79234, Dec. 27, 2002; El Paso Energy Bridge Gulf of Mexico, LLC Deepwater Port, 68 FR 3299, January 23, 2003) thus far have been processed using the existing provisions of 33 CFR part 148 that govern the license application process. With publication of this temporary interim rule, we now will complete the processing of these two applications under the revised provisions of part 148.

Applicable Standards

In the Deepwater Port Act's first three decades, only one deepwater port was constructed. By contrast, in the first three months following MTSA's amendment of DWPA, the Coast Guard became aware of about half a dozen potential applicants, and two applications for natural gas facilities were received within weeks of MTSA's enactment. In order to fulfill MTSA's mandate to issue implementing regulations as soon as practicable, we have sought to provide the public with a comprehensive regulatory scheme at this time, even though that scheme will certainly require fine-tuning as both government and industry acquire more experience in addressing the issues posed by the growing interest in deepwater ports.

One area in which we intend to refine these rules is in identifying the industry standards or similar commonly accepted authorities that we think provide deepwater port operators with adequate guidance for the safe design, construction, and operation of their facilities. Our 2002 NPRM listed several such authorities and invited the public to suggest others. Two commenters on that NPRM favored incorporation of industry standards wherever possible. Similarly, rules that were proposed in the 1999 OCS Activities NPRM—to which the 2002 NPRM referred and on which much of this new temporary interim rule's provisions are based—liberally incorporated industry standards or other authorities.

The incorporation by reference of such industry standards is attractive to industry and to regulators alike. However, it is not yet clear whether standards mentioned in the earlier NPRMs are the best guides for a deepwater port industry that soon could be dominated by natural gas facilities, some of them unmanned.

Accordingly, in this temporary interim rule we have removed references to industry standards in our regulatory text, and instead, we have written into the regulations performance levels that we believe deepwater ports must meet. Applicants and operators will need to demonstrate the ability to maintain these prescribed levels. We are

not ready to identify industry standards in the regulations that will have the force of law for both regulators and the regulated public.

The Deepwater Port Modernization Act of 1996 was intended to encourage flexibility and innovation and to avoid writing regulations that fit the existing model for deepwater ports represented by the Louisiana Offshore Oil Port (LOOP). DPMA supports detailing port-specific requirements in the license or, as much as possible, in the port's operations manual.

With rapid advances in technology, such as those now seen in the offshore energy and transportation industry, new regulations may lag and existing ones may not fully apply to proposed innovations. The current situation is similar to one that existed 15 years ago when tension leg platforms were introduced to access oil and gas on the U.S. Outer Continental Shelf at previously unattainable water depths. At that time industry submitted a design basis plan that the Coast Guard reviewed and approved as the standards to be used for a particular project. Now, applicants for deepwater port licenses have identified proposed standards or a design basis plan within their applications. The Coast Guard is identifying appropriate standards as part of the application reviews and for inclusion in the final rule for deepwater ports. In doing so, we will combine, to the extent practicable, existing standards and regulations that have proven successful for vessels, offshore structures, and onshore liquified natural gas (LNG) import terminals.

In addition, several classification societies are developing guides for offshore LNG terminals. We will work with them and other Federal agencies having experience in various aspects of oil and LNG terminals to determine the adequacy of these guides and other relevant standards and regulations, such as NFPA 59A and 49 CFR part 193.

We invite your comments about standards that may be of value to the Coast Guard and industry, and we may revise our final rule to incorporate some of these standards by reference.

Also, in the event that we adopt an interpretive policy under which specific industry standards are identified as beneficial in complying with requirements of the temporary interim rule, we will publish a notice in the **Federal Register** to call your attention to that policy. Standards identified in that manner will not have the force of law, but they should provide worthwhile guidance.

Old-to-New Reference Tables

This rulemaking amends 33 CFR parts 148, 149, and 150, which were first issued in 1975. In revising those parts, we have found it necessary to relocate some provisions and to eliminate others as obsolete. In addition, this temporary interim rule draws upon proposed regulatory text that first appeared in the 2002 Deepwater Ports NPRM and in the 1999 OCS Activities NPRM (*see* ''Related Rulemaking,'' above), and relocates or eliminates much of that material as well. Therefore, we have inserted the following tables to help you locate related old and new provisions.

There are three tables:

Table 1 is arranged by ''new'' temporary interim rule section, and lists the ''old'' sources from which the new provision is drawn, whether that old parallel provision exists in the CFR rules that were in force until publication of the temporary interim rule, or was proposed in either the 2002 Deepwater Ports NPRM or the 1999 OCS Activities NPRM. If a new provision is listed without an old parallel, it has been added in this temporary interim rule for the first time, for a reason explained in ''Discussion of Comments and Changes,'' below.

Table 2 is arranged by existing CFR section. These are ''old'' Coast Guard rules in force until the publication of this temporary interim rule, with their ''new'' parallel provisions in the temporary interim rule (as well as a middle column showing where the CFR section was paralleled in either the 2002 Deepwater Ports NPRM or the 1999 OCS Activities NPRM). If an old provision is listed without a new parallel, it was eliminated from this temporary interim rule for a reason explained in ''Discussion of Comments and Changes,'' below.

Table 3 is arranged by NPRM section. These are ''old'' sections that were proposed either in the 2002 Deepwater Ports NPRM or as an amendment to 33 CFR part 142 or part 143 in the 1999 OCS Activities NPRM, with their ''new'' parallel provisions in the temporary interim rule. If an old provision is listed without a new parallel, it was eliminated from this temporary interim rule for a reason explained in ''Discussion of Comments and Changes,'' below.

TABLE 1.—TEMPORARY INTERIM RULE (TIR) SECTIONS TO NPRM AND CFR SECTIONS

If you are looking at the TIR cite—	It is derived from the NPRM* at proposed—	That was derived from 33 CFR—
148.1	148.1	148.1
148.2	148.2	149.105, 150.103
148.3	148.3	
148.5	148.5	148.3, 150.204, 150.303, 150.403
148.100	148.100	148.101
148.105	148.105	148.109
148.107	148.107	148.109(z)
148.108	148.108	148.109(z)(5)
148.110	148.110	148.105
148.115	148.115	148.103, 148.107(a), (b)
148.125	148.125	148.107(c) through (e)
148.200	148.200	148.201
148.205	148.205	148.205
148.207	148.207	148.207
148.209	148.209	148.211
148.211	148.211	148.213
148.213	148.213	148.215
148.215	148.215	148.216
148.217	148.217	148.217
148.221	148.221	148.219
148.222	148.222(a) and (b)	148.231
148.227	148.227	148.235
148.228	148.228	148.251

TABLE 1.—TEMPORARY INTERIM RULE (TIR) SECTIONS TO NPRM AND CFR SECTIONS—Continued

If you are looking at the TIR cite—	It is derived from the NPRM* at proposed—	That was derived from 33 CFR—
148.230	148.230	148.253, .283
148.232	148.232	148.203(b), .287, .291
148.234	148.234	148.255
148.236	148.236	148.257
148.238	148.238	148.261
148.240	148.240	148.263
148.242	148.242	148.265
148.244	148.244	148.267
148.246	148.246	148.273(a) and (c)
148.248	148.248	148.273(b)
148.250	148.250	148.275
148.252	148.252	148.281
148.254	148.254	148.285
148.256	148.256.	
148.276	148.276	148.321(b)
148.277	148.277	148.321(a)
148.279	148.279	148.323
148.281	148.281	148.325
148.283	148.283	148.327
148.300	148.300	148.400
148.305	148.305	148.403
148.307	148.307	148.407(a)
148.310	148.310	148.405
148.315	148.315	
148.320	148.320	
148.400	148.400	148.501
148.405	148.405	148.503
148.410	148.410	148.505
148.415	148.415	148.507
148.420	148.420	148.509
148.500	148.500	148.601
148.505	148.505	148.603
148.510	148.510	148.605
148.515	148.515	148.607
148.600	148.610	
148.605	148.605	148.703
148.700, .702, .705, .707, .708, .709, .710, .715, .720, .722, .725, .730, .735, .737.	148 Appendix A	148 Appendix A
149.1	149.1	149.101
149.5	149.5	
149.10	149.10	
149.100	149.100	149.301
149.103	149.103	149.319
149.105	149.105	149.303
149.110	149.110	149.305
149.115	149.115	149.307
149.120	149.120	149.309
149.125	149.125	149.311
149.130	149.130	149.313
149.135	149.135	149.315
149.140	149.140	149.317
149.145	149.145	149.403
149.150	149.150	149.321
149.300	149.300	
149.301 through 149.339	149.305 [which references Sub N** NPRM sections 143.810 through 143.885, and 143.910 through 143.925]	
149.340	149.310	149.402
149.400	149.400	
149.401	149.405	
149.402	143.1010 [Sub N]	
149.403, .404	149.430/143.1015 [Sub N]	149.402
149.405	143.1020 [Sub N]	
149.406	143.1025 [Sub N]	
149.407	143.1026 [Sub N]	
149.408	143.1028 [Sub N]	
149.409	143.1029 [Sub N]	
149.410	143.1030 [Sub N]	
149.411	143.1035 [Sub N]	
149.412	143.1040 [Sub N]	
149.413	143.1045 [Sub N]	
149.414	143.1050 [Sub N]	

TABLE 1.—TEMPORARY INTERIM RULE (TIR) SECTIONS TO NPRM AND CFR SECTIONS—Continued

If you are looking at the TIR cite—	It is derived from the NPRM* at proposed—	That was derived from 33 CFR—
149.415	149.410/143.1055 [Sub N]	149.451
149.416	149.415	149.453
149.417	149.420	149.457
149.418	149.425(a)	149.467
149.419	New	
149.420	143.1060 [Sub N]	
149.421	143.1061 [Sub N]	
149.422	143.1062 [Sub N]	
149.423	143.1135 [Sub N]	
149.424	New.	
149.500	149.500	149.701
149.505	149.505	149.705
149.510	149.510	149.707
149.520	149.520	
149.535	149.535	149.797
149.540	149.540	149.751
149.550	149.550	149.753
149.560	149.560	149.771 and 149.772
149.565	149.565	149.773
149.570	149.570	149.791
149.575	149.575	149.793
149.580	149.580	149.795
149.585	149.585	149.799
149.600	149.600	149.201
149.610	149.610	150.117
149.615	149.615	149.203 (a) and (b)
149.620	149.620	149.203 (c) and (d)
149.625	149.625	149.205
149.630	149.630	
149.640	149.640	149.206
149.641	143.1115 [Sub N]	
149.642	143.1115 [Sub N]	
149.643	143.1115 [Sub N]	
149.644	143.1115 [Sub N]	
149.645	143.1120 [Sub N]	
149.646	143.1120 [Sub N]	
149.647	143.1120 [Sub N]	
149.650	149.650	149.209 and 150.121
149.655	149.655	149.213
149.660	149.660	149.411
149.665	149.665	149.541
149.670	149.670	149.543
149.675	149.675	149.545
149.680	149.680	149.217 and 150.527
149.685	149.685	
149.690	149.690	149.421, .423, .431, .433 and .441
149.691	143.1220 [Sub N]	
149.692	143.1221 [Sub N]	
149.693	143.1222 [Sub N]	
149.694	143.1230 [Sub N]	
149.695	143.1231 [Sub N]	
149.696	143.1232 [Sub N]	
149.697	143.1235 [Sub N]	
149.700	149.695	149.539
150.1	150.1	150.101
150.5	150.5	
150.10 (a)–(d)	150.10 (a)–(b)	150.105 (a)–(b)
150.10 (e)	150.10 (c)	150.109
150.15	150.15	150.105
150.20	150.20	150.106
150.25	150.25	150.107 (a)–(c)
150.30	150.30	150.107 (a)–(c)
150.35	150.35	150.107 (d)
150.40	150.40	150.113
150.45	150.45	150.115
150.50	150.50	150.129
150.100	150.100	
150.105	New	[see Note 1]
150.110	New	
150.200	150.205	
150.205	150.210	150.203
150.210	150.215	150.217

TABLE 1.—TEMPORARY INTERIM RULE (TIR) SECTIONS TO NPRM AND CFR SECTIONS—Continued

If you are looking at the TIR cite—	It is derived from the NPRM* at proposed—	That was derived from 33 CFR—
150.225	150.250	
150.300	150.300	150.301
150.305	150.305	
150.310	150.310	150.307
150.320	150.320	150.309 (a) and (b)
150.325	150.325	150.333
150.330	150.330	150.335
150.340	150.340	150.337
150.345	150.345	150.315
150.350	150.350	150.338
150.355	150.355	150.317, 150.339
150.380	150.380	150.345
150.385	150.385	
150.400	150.400	150.400
150.405	150.405	150.405
150.420	150.420	150.411
150.425	150.425	150.413
150.430	150.435	150.417
150.435	150.440	150.423
150.440	150.445	150.425
150.445	150.447	150.421
150.500	150.500	150.500
150.501	150.505	150.503
150.502	143.615 [Sub N]	
150.503	143.620 [Sub N]	
150.504	143.625 [Sub N]	
150.505	143.630 [Sub N]	
150.506	143.635 [Sub N]	
150.507	143.640 [Sub N]	
150.508	143.645 [Sub N]	
150.509	150.510	
150.510	143.710 [Sub N]	
150.511	143.715 [Sub N]	
150.512	143.720 [Sub N]	
150.513	143.725 [Sub N]	
150.514	143.730 [Sub N]	
150.515	143.735 [Sub N]	
150.516	143.740 [Sub N]	
150.517	143.745 [Sub N]	
150.518	143.765 [Sub N]	
150.519	143.760 [Sub N]	
150.520	143.750 [Sub N]	
150.521	143.755 [Sub N]	
150.530	150.515	150.504
150.531	150.520	150.505
150.532	150.525	150.507
150.540	150.530	150.515
150.550	150.535	150.517
150.555	New	
150.600	150.600	150.509
150.601	New	
150.602	142.20 [Sub N]	
150.603	142.25 [Sub N]	
150.604	142.30 [Sub N]	
150.605	142.35 [Sub N]	
150.606	142.40 [Sub N]	
150.607	New	
150.608	142.110 [Sub N]	
150.609	142.115 [Sub N]	
150.610	142.120 [Sub N]	
150.611	142.125 [Sub N]	
150.612	142.130 [Sub N]	
150.613	142.235 [Sub N]	
150.614	142.140 [Sub N]	
150.615	142.215 [Sub N]	
150.616	142.220 [Sub N]	
150.617	142.225 [Sub N]	
150.618	142.150–.152/142.180–.183 [Sub N]	
150.619	142.155 [Sub N]	
150.620	142.245 [Sub N]	
150.621	142.260 [Sub N]	
150.622	142.285 [Sub N]	

TABLE 1.—TEMPORARY INTERIM RULE (TIR) SECTIONS TO NPRM AND CFR SECTIONS—Continued

If you are looking at the TIR cite—	It is derived from the NPRM* at proposed—	That was derived from 33 CFR—
150.623	Part 142 subpart D [Sub N]	
150.624	142.185 [Sub N]	
150.625	142.410 [Sub N]	
150.626	142.415 [Sub N]	
150.627	142.420 [Sub N]	
150.628	142.425 [Sub N]	
150.700	150.700	150.601
150.705	150.705	150.603
150.710	150.710	150.605
150.715	150.715	150.607
150.720	150.720	150.611
150.800	150.800	150.701
150.805	150.805	150.703
150.810	150.810	150.705
150.815	150.815	150.711
150.820	150.820	150.711
150.825	150.825	
150.830	150.830	
150.835	150.835	150.713
150.840	150.840	150.751
150.845	150.845	150.753
150.850	150.850	150.759
150.900	150.900	150 Appendix A
150.905	150.905	150 Appendix A
150.910	150.910	150 Appendix A
150.915	150.915	150 Appendix A
150.920	150.920	147.30
150.925	150.925	147.35
150.930	150.930	147.105

*Unless noted otherwise, ''NPRM'', notice of proposed rulemaking, refers to the NPRM on Deepwater Ports (USCG–1998–3884).

**''[Sub N]'' means the section listed was published in the NPRM on OCS Activities (USCG–1998–3868).

Note 1: The advent of this section was discussed on page 37927 (in the preamble only) of the NPRM on Deepwater Ports (USCG–1998–3884).

TABLE 2.—PRIOR CFR SECTIONS TO NPRM AND TIR SECTIONS

If the regulation is in 33 CFR—	It was found in the NPRM* at proposed—	And it is now in the TIR at—
148.1	148.1	148.1
148.3	148.5	148.5
148.101	148.100	148.100
148.103	148.115	148.115
148.105	148.110	148.110
148.107(a) and (b)	148.115	148.115
148.107(c), (d), and (e)	148.125	148.125
148.109	148.105	148.105
148.109(z)	148.107	148.107
148.109(z)	148.108	148.108
148.111		
148.201	148.200	148.200
148.203(b)	148.232	148.232
148.205	148.205	148.205
148.207	148.207	148.207
148.211	148.209	148.209
148.213	148.211	148.211
148.215	148.213	148.213
148.216	148.215	148.215
148.217	148.217	148.217
148.219	148.221	148.221
148.231	148.222(a) and (b)	148.222(a) and (b)
148.233	148.222(c)	148.222(c)
148.235	148.227	148.227
148.251	148.228	148.228
148.253	148.230	148.230
148.255	148.234	148.234
148.257	148.236	148.236
148.259	148.232(a)	148.232(a)
148.261	148.238	148.238
148.263	148.240	148.240
148.265	148.242	148.242
148.267	148.244	148.244

TABLE 2.—PRIOR CFR SECTIONS TO NPRM AND TIR SECTIONS—Continued

If the regulation is in 33 CFR—	It was found in the NPRM* at proposed—	And it is now in the TIR at—
148.269	148.232(a)	148.232(a)
148.271	148.232(a)	148.232(a)
148.273(a) and (c)	148.246	148.246
148.273(b)	148.248	148.248
148.275	148.250	148.250
148.277	148.232(a)	148.232(a)
148.279	148.232(a)	148.232(a)
148.281	148.252	148.252
148.283	148.230	148.230
148.285	148.254	148.254
148.287	148.232	148.232
148.289	148.232, .242	148.232, .242
148.291	148.232(a)	148.232
148.321(a)	148.277	148.277
148.321(b)	148.276	148.276
148.323	148.279	148.279
148.325	148.281	148.281
148.327	148.283	148.283
148.400	148.300	148.300
148.403	148.305	148.305, 148.307
148.405	148.310	148.310
148.407	148.277, .307	148.277, .307
148.501	148.400	148.400
148.503	148.405	148.405
148.505	148.410	148.410
148.507	148.415	148.415
148.509	148.420	148.420
148.601	148.500	148.500
148.603	148.505	148.505
148.605	148.510	148.510
148.607	148.515	148.515
148.701	148.600	148.600
148.703	148.605	148.605
148 Appendix A	148 Appendix A	148.700, .702, .705, .707, .708, .709, .710, .715, .720, .722, .725, .730, .735, .737
148 Annex A	148 Annex A	148.730, .735, .737
149.101	149.1	149.1
149.105	148.2	149.5
149.201	149.600	149.600
149.203(a) through (c)	149.615	149.615
149.203(d)	149.620	149.620
149.205	149.625	149.625
149.206	149.640	149.640
149.209	149.650	149.650
149.211		
149.213	149.655	149.655
149.215		
149.217	149.680	149.680
149.301	149.100	149.100
149.303	149.105	149.105
149.305	149.110	149.110
149.307	149.115	149.115
149.309	149.120	149.120
149.311	149.125	149.125
149.313	149.130	149.130
149.315	149.135	149.135
149.317	149.140	149.140
149.319	149.103	149.103
149.321	149.150	149.150
149.401	150.15	150.15
149.402	149.310 and 149.430	150.501
149.403	149.145	149.145
149.411	149.660	149.660
149.421	149.690	149.690
149.423	149.690	149.690
149.431	149.690	149.690
149.433	149.690	149.690
149.441	149.690	149.690
149.451	149.410	149.415
149.453	149.415(a) through (c)	149.416
149.455	149.415(d)	149.416(d)
149.457	149.420(a) through (c)	149.417

TABLE 2.—PRIOR CFR SECTIONS TO NPRM AND TIR SECTIONS—Continued

If the regulation is in 33 CFR—	It was found in the NPRM* at proposed—	And it is now in the TIR at—
149.459	149.420(d)	149.417(a)
149.461	149.420(e)	149.417(c)
149.463	149.420(f)	
149.465	149.420(g)	149.417(e)
149.467	149.425(a)	150.532
149.469	149.425(b)	
149.471	149.425(c)	
149 473	149.425(d)	
149.477	149.425(e)	
149.479		
149.481	149.405	149.401
149.483	149.405	149.401
149.491	149.405	
149.501	149.405	
149.503	149.405	
149.505	149.405	
149.507	149.405	
149.511	149.405	149.401
149.513	149.405	149.421
149.515	149.405	149.412
149.517	149.405	149.411
149.521 through 149.537	149.305	149.301 through .333
149.539	149.695	149.700
149.541	149.665	149.665
149.543	149.670	149.670
149.545	149.675	149.675
149.701	149.500	149.500
149.703	149.521	149.535
149.705	149.505	149.520
149.707	149.510	149.510
149.721	150.715	150.715
149.723	149.527	
149.724	149.520	149.520
149.725		
149.727	149.525	149.520
149.729		
149.751	149.540	149.540
149.753	149.550	149.550
149.755(a) and (b)	149.531(a) and (b)	
149.755(c)	149.555(a) and (b)	
149.757(a)	149.531(c)	
149.757(b)	149.545(a)(3)	
149.757(c)	149.555(c)	149.550
149.759	149.533	
149.771		
149.773	149.560	149.560
149.775	149.565	149.565
149.791	149.570	149.570
149.793	149.575	149.575
149.795	149.580	149.580
149.797	149.535	149.535
149.799	149.585	149.585
150.101	150.1	150.1
150.103	148.2	148.2
150.105	150.10	150.10
150.106	150.20	150.20
150.107(a)–(c)	150.25	150.25
150.107(d)	150.35	150.35
150.109	150.10	150.10(e)
150.113	150.40	150.40
150.115	150.45	150.45
150.117		
150.119		150.110
150.121		
150.123		
150.125		
150.127	150.15	150.15
150.129	150.50	150.50
150.201	150.200	
150.203	150.210	150.205
150.204	148.5	148.5
150.205	150.220	

TABLE 2.—PRIOR CFR SECTIONS TO NPRM AND TIR SECTIONS—Continued

If the regulation is in 33 CFR—	It was found in the NPRM* at proposed—	And it is now in the TIR at—
150.207	150.225	
150.209	150.230	
150.211	150.235	
150.213	150.240	
150.215	150.245	
150.217	150.215	150.210
150.301	150.300	150.300
150.303	148.5	148.5
150.305	150.15	150.15
150.307	150.310	150.310
150.309 (a) and (b)	150.320	150.320
150.309 (c)	150.365	150.320
150.311		150.15
150.313		150.340
150.315	150.345	150.345
150.317	150.355	150.355
150.333	150.325	150.325
150.335	150.330	150.330
150.337	150.340	150.340
150.338	150.350	150.350
150.339	150.355	150.355
150.341	150.370	
150.342	150.375	
150.345	150.380	150.380
150.400	150.400	150.400
150.403	148.5	148.5
150.405	150.405	150.405
150.407		
150.409		
150.411	150.420	150.420
150.413	150.425	150.425
150.415	150.430	
150.417	150.435	150.430
150.419		
150.421	150.447	150.445
150.423	150.440	150.435
150.425	150.445	150.440
150.500	150.500	150.500
150.503	150.505	150.501
150.504	150.515	150.530
150.505	150.520	150.531
150.507	150.525	150.532
150.509	150.600	150.540
150.511	150.600	150.550
150.513		
150.515	150.530	150.540
150.516		150.600
150.517	150.535	150.550
150.519		
150.521		
150.523		
150.525	150.600	150.600
150.527	149.680	149.680
150.601	150.700	150.700
150.603	150.705	150.705
150.605	150.710	150.710
150.607	150.715	150.715
150.611	150.720	150.720
150.701	150.800	150.800
150.703	150.805	150.805
150.705	150.810	150.810
150.707		
150.711	150.815, .820	150.815, .820
150.713	150.835	150.835
150.751	150.840	150.840
150.753	150.845	150.845
150.755		
150.757		
150.759	150.850	150.850
150 Appendix A	150.900 through 150.915	150.900 through .930
150 Annex A	150.935	150.905

*Unless noted otherwise, ''NPRM'', notice of proposed rulemaking, refers to USCG–1998–3884.

TABLE 3.—NPRM SECTIONS TO TIR SECTIONS

The regulation in the NPRM* at section—	Is now in the TIR at section—
148.1	148.1
148.2	148.2
148.3	148.3
148.5	148.5
148.10	
148.100	148.100
148.105	148.105
148.107	148.107
148.108	148.108
148.110	148.110
148.115	148.115
148.125	148.125
148.200	148.200
148.203	
148.205	148.205
148.207	148.207
148.209	148.209
148.211	148.211
148.213	148.213
148.215	148.215
148.217	148.217
148.221	148.221
148.222	148.222
148.227	148.227
148.228	148.228
148.230	148.230
148.232	148.232
148.234	148.234
148.236	148.236
148.238	148.238
148.240	148.240
148.242	148.242
148.244	148.244
148.246	148.246
148.248	148.248
148.250	148.250
148.252	148.252
148.254	148.254
148.256	148.256
148.276	148.276
148.277	148.277
148.279	148.279
148.281	148.281
148.283	148.283
148.300	148.300
148.305	148.305
148.307	148.307
148.310	148.310
148.315	148.315
148.320	148.320
148.400	148.400
148.405	148.405
148.410	148.410
148.415	148.415
148.420	148.420
148.500	148.500
148.505	148.505
148.510	148.510
148.515	148.515
148.600	148.600
148.605	148.605
148.610	
148 Appendix A	148.700, .702, .705, .707, .708, .709, .710, .715, .720, .722, .725, .730, .735, .737
148 Annex A	148.730, .735, .737
149.1	149.1
149.5	149.5

TABLE 3.—NPRM SECTIONS TO TIR SECTIONS—Continued

The regulation in the NPRM* at section—	Is now in the TIR at section—
149.10	149.10
149.100	149.100
149.105	149.105
149.110	149.110
149.115	149.115
149.120	149.120
149.125	149.125
149.130	149.130
149.135	149.135
149.140	149.140
149.145	149.145
149.150	149.150
149.300	149.300
149.305	149.301 through 149.339
149.310	
149.400	149.400
149.405	149.401
149.410	149.415
149.415	149.416
149.420	149.417
149.425	149.418
150.430	
149.500	150.500
149.505	149.505
149.510	149.510
149.520	149.520
149.521	
149.523	
149.525	
149.527	
149.530	
149.531	
149.533	
149.535	149.535
149.540	149.540
149.545	
149.550	149.550
149.555	
149.560	149.560
149.565	149.565
149.570	149.570
149.575	149.575
149.580	149.580
149.535	149.535
149.585	149.585
149.600	149.600
149.610	149.610
149.615	149.615
149.620	149.620
149.625	149.625
149.630	149.630
149.640	149.640
149.650	149.650
149.655	149.655
149.660	149.660
149.665	149.665
149.670	149.670
149.675	149.675
149.680	149.680
149.685	149.685
149.690	149.690
149.695	149.700
150.1	150.1
150.5	150.5
150.10	150.10
150.15	150.15
150.20	150.20
150.25	150.25
150.30	150.30

TABLE 3.—NPRM SECTIONS TO TIR SECTIONS—Continued

The regulation in the NPRM* at section—	Is now in the TIR at section—
150.35	150.35
150.40	150.40
150.45	150.45
150.50	150.50
150.100	150.100
150.200	
150.205	150.200
150.210	150.205
150.215	150.210
150.220	
150.225	
150.230	
150.235	
150.240	
150.245	
150.250	150.250
150.300	150.300
150.310	150.310
150.320	150.320
150.325	150.325
150.330	150.330
150.340	150.340
150.345	150.345
150.350	150.350
150.355	150.355
150.365	150.320
150.370	
150.375	
150.380	150.380
150.400	150.400
150.405	150.405
150.420	150.420
150.425	150.425
150.430	
150.435	150.430
150.440	150.435
150.445	150.440
150.447	150.445
150.500	150.500
150.505	150.501
150.510	150.509
150.515	150.530
150.520	150.531
150.525	150.532
150.530	150.540
150.535	150.550
150.600	150.601
150.700	150.700
150.705	150.705
150.710	150.710
150.715	150.715
150.720	150.720
150.800	150.800
150.805	150.805
150.810	150.810
150.815	150.815
150.820	150.820
150.825	150.825
150.830	150.830
150.835	150.835
150.840	150.840
150.845	150.845
150.850	150.850
150.900	150.900
150.905	150.905
150.910	150.910
150.915	150.915
150.920	150.920
150.925	150.925

TABLE 3.—NPRM SECTIONS TO TIR SECTIONS—Continued

The regulation in the NPRM* at section—	Is now in the TIR at section—
150.930 ..... 150.935	150.930

*Unless noted otherwise, ''NPRM'', notice of proposed rulemaking, refers to USCG–1998–3884.

Discussion of Comments and Changes

In the following pages we discuss public comments received on our 2002 NPRM as well as other significant changes made to the regulatory text since that NPRM was published. This discussion begins with a review of general comments and then moves sequentially through the three parts of Title 33, Code of Federal Regulations (parts 148, 149, and 150) that are amended by this rulemaking. The section designations match those that you will see in the regulatory text that follows this preamble. In many cases, those designations have changed since the 2002 NPRM. In addition, the temporary interim rule incorporates provisions that appeared in the 1999 OCS Activities NPRM (*see* ''Related Rulemaking,'' above) and that were proposed as amendments to parts 142 and 143 of title 33. Finally, you may wish to compare the text of parts 148, 149, or 150 that were effective prior to this temporary interim rule. To move between ''old'' provisions and their ''new'' parallels, or vice versa, use the three tables appearing under ''Old-to-New Reference Tables,'' above.

Many sections of the temporary interim rule have been changed for one or more of the following reasons:

- The change is not substantive—in this category we include changes made merely to reflect the Coast Guard's transfer to the new Department of Homeland Security, conversion of English or metric measurements and elimination of imprecise equivalents for those measurements, and changes that provide updated information without imposing any new legal requirement;
- We amended the section to accommodate the legislative addition of natural gas deepwater ports; or
- We added the section in order to describe in detail requirements in the NPRM that were only incorporated by reference to the OCS Activities NPRM.

In these cases, we do not specifically discuss the section below, unless there is some additional reason for doing so.

One noticeable but nonsubstantive change from the 2002 NPRM is the temporary interim rule's omission of Appendix A to part 148. In the 2002 NPRM, Appendix A contained updated environmental review criteria for deepwater ports. These provisions are regulatory in nature and we consider it more appropriate to designate them as such. Updated environmental review criteria, therefore, now appear as subpart G in part 148 (§ 148.700 *et seq.*).

We received comments from 9 commenters during the public comment period. A 10th commenter submitted comments largely concerned with natural gas issues, but not until several months after the close of the comment period. The 10th commenter's comments have been docketed (USCG–1998–3884–19), but they have not been considered in the drafting of this temporary interim rule.

General comments: Two commenters asked us to complete this rulemaking as quickly as possible. One commenter asked if we would ''grandfather'' this temporary interim rule so that existing deepwater ports would have time to comply with its requirements. Because we consider the sole existing deepwater port to be in compliance with this temporary interim rule, there is no need for grandfathering.

Specific comments: The following comments related to specific portions of the regulatory text.

§ 148.5. One commenter asked us to define ''hydrographic survey'' and to distinguish ''engineering hydrographic survey'' from ''reconnaissance hydrographic survey.'' We have added or clarified these definitions. This commenter also asked us to reinstate the definition of ''marine site,'' which we have done because it addresses information independent of, but complementary to, the definition of a deepwater port. A second commenter asked us to add a definition of ''oil residue.'' In light of our removal of § 149.150, this request is no longer relevant.

Two commenters on the 1999 OCS Activities NPRM offered their views on the definition of ''confined space'' that now appears in this section. One commenter suggested that we reword the definition to make clear that a space ''not designed for continuous occupancy'' means a space ''not designed for continuous routine occupancy.'' The commenter said that ''continuous'' implies that occupancy must be uninterrupted, while ''continuous routine'' suggests that occupancy can be interrupted. The commenter said that, therefore, spaces like closets or storerooms, which are routinely but not uninterruptedly occupied, could be treated as ''confined spaces.'' We believe ''continuous occupancy'' better expresses our intent and have not modified this definition. The second commenter offered a different definition of ''confined space'' based on the industry standard ANSI Z117.1–1995(1). Aside from recommending this industry standard as guidance for confined space entry requirements, this commenter did not explain why the ANSI definition is superior to the one we proposed. As we explain in ''Applicable Standards,'' above, we are not ready at this time to adopt industry standards. We see no reason at this time to change our definition of ''confined space.''

We also made the following changes: We redefined ''citizen of the United States'' and ''person'' to more closely match definitions used in DWPA; we added definitions of ''area to be avoided,'' ''no anchoring area,'' ''operator,'' and ''routing measures''; and we deleted ''PAD District'' because the Department of Energy no longer requires deepwater port operators to furnish information associated with that term.

Finally, we added a definition of ''Maritime Administration (or MARAD)'' because our rule frequently refers to that agency. We considered using the term ''licensing authority'' instead, to avoid confusion between the Secretary of Transportation and the Maritime Administration (MARAD). DWPA vests deepwater port licensing authority in the Secretary. MARAD currently exercises that authority under a delegation from the Secretary. While it might be technically more correct to use a neutral term like ''licensing authority,'' we have chosen to retain references to MARAD since they more directly describe the current procedure and can be easily changed should the Secretary ever change this delegation.

§ 148.10. We deleted this section (concerning incorporation of industry standards) that appeared in the NPRM. See the discussion under ''Applicable Standards'' above.

§ 148.105. Several commenters asked that we allow preliminary submission of an outline or concept of operations in lieu of a detailed draft operations manual. We have amended this section to allow submission of an operations manual outline. A detailed operations manual will still need Coast Guard approval before a deepwater port begins operations.

§ 148.105(a)(5). One commenter recommended that we narrow the information required by this paragraph so that outstanding litigation need be disclosed only if it is directly related to bankruptcy proceedings or violation of Federal or State laws. We agree and

have amended the paragraph accordingly.

§ 148.105 (b). One commenter said we should require information about affiliates and engineering firms only if they are involved in the design or construction of the port. We agree and have revised this paragraph accordingly.

§ 148.105(d). We have revised this paragraph extensively in order to clarify what is required to show United States citizenship under DWPA, and to reflect the popularity of new forms of business organization such as the limited liability company.

§ 148.105(g)(1). One commenter suggested a 3 percent threshold for affiliates. To reduce the regulatory burden on applicants, we revised this paragraph so that applicants need list only partners who have a substantial ownership interest, and affiliates who are contractually interested in the deepwater port. We added alternative compliance provisions relating to affiliate financial information.

§ 148.105(g)(2). One commenter said the application's overall site plan should address the decommissioning and removal of the facility. We think each applicant will have some plan for decommissioning and removal, in order to meet this paragraph's requirement for a detailed cost estimate for removal, and that this is sufficient for licensing purposes. An operator's final plan for decommissioning and removal would have to comply with legal requirements in effect at that time.

§ 148.105(g)(4). Three commenters recommended deleting the requirement that an applicant demonstrate the financial viability of its projects by submitting throughput and financial projections, arguing that the value of these projections would be outweighed by the competitive disadvantage at which an applicant could be put by publishing these projections. We have retained the requirement because this is essential information that is necessary and appropriate within the meaning of 33 U.S.C. 1504.

§ 148.105(g)(5). One commenter recommended eliminating the requirement for estimates of future refinery capacity, runs to the stills, and refinery product demand. We agree that much of the required data is no longer needed, because competition concerns envisioned when DWPA was originally enacted never materialized. We have revised this paragraph accordingly. Another commenter said certain requirements for data on onshore components were more financial than technical in nature and should either be eliminated or combined with other requirements for financial data. We have retained the requirements but transferred them to this paragraph.

§ 148.105(h). One commenter asked us to align the information requirements for facility contractors with those for design firms. We agree that our need for information about contractors and designers is similar, so we have amended this paragraph accordingly. This commenter also said we should defer the required submission of a final contract, perhaps until after a license is issued. While some contracts may not be final when the application is submitted, generally licenses should be issued only after all information is provided. In extenuating circumstances, MARAD may grant a conditional license. Finally, this commenter asked us to restrict the ''other studies'' required by (h)(2)(ii) to ''construction-related'' studies, and we have revised that paragraph accordingly.

§ 148.105(i). One commenter asked us to align this paragraph, regarding compliance with the Federal Water Pollution Control Act, with 148.105(z), concerning the processing of an application for which complete National Pollution Discharge Elimination System information is unavailable. We have revised this paragraph accordingly.

§ 148.105(i)(2). One commenter said the applicant should include all requests for required certifications with its application, to further the DWPA goal of a coordinated Federal mechanism for all certifications. We have amended this paragraph to clarify that the applicant must include a copy of its request for certification, in cases where actual certification has not yet been granted. Where the appropriate coordinating agency does not issue an actual certificate, it will conduct a formal review and recommend action to the Coast Guard and MARAD. Applicants may wish to work directly with coordinating agencies in conjunction with the Coast Guard and MARAD.

§ 148.105(m). One commenter requested more guidance as to the scope and purpose of a ''reconnaissance hydrographic survey,'' and another commenter asked us to limit the reconnaissance survey to basic information. We have revised this paragraph accordingly.

§ 148.105(n). One commenter suggested that collection of soil samples be restricted to areas seaward of the high water mark. We have declined to insert that restriction, because the National Environmental Policy Act requires the deepwater port environmental assessment to consider the onshore implications of actions ''connected'' to construction or operation of the port itself. Two commenters asked us to allow the use of existing environmental studies in areas where the data sources are credible, reliable, and meet Coast Guard and Environmental Protection Agency (EPA) requirements for site-specific environmental analysis. We have amended this paragraph accordingly. We also define when existing surveys need to be supplemented by new data collection.

§ 148.105(o). One commenter said applicants should submit archeological data with their applications. We agree and added this paragraph accordingly. Applicants may wish to coordinate their work in this area with the EPA and the Minerals Management Service (MMS).

§ 148.105(r). One commenter said that site-specific, detailed information should not be required with the application, but only prior to deepwater port start-up. We have revised this paragraph to allow applicants to address the details of compliance in the operations manual. We permit minor modifications or deviation from the original design after submission of the application, but we will not permit revisions that potentially affect the project's environmental analysis or the status of the application.

§ 148.105(s). We revised this paragraph to delete the requirement to provide design and evaluation studies. We had previously deleted a similar requirement for floating components.

§ 148.105(t). One commenter said that the required data for onshore components could put applicants at a competitive disadvantage by requiring them to disclose their plans for securing transportation and storage. Another commenter said our requirements for throughput information were onerous and overbroad and arose from historical competition concerns that did not materialize. We have revised this paragraph, eliminating many requirements that appeared in the NPRM. These revisions should meet both commenters' objections.

§ 148.105(u). One commenter said we should eliminate the support vessel requirements of (u)(3) and (u)(4) because these requirements are already addressed in the operations manual. This is essential information and therefore we continue to require it to be addressed, briefly, in the application.

§ 148.105(w). One commenter said that the draft operations manual should be submitted at least one year prior to port start-up, but should not be required with the application because meaningful information is available only later. We believe a draft manual that demonstrates the applicant's ability

to operate its proposed port safely and effectively is an indispensable element of the application process and can be supplemented as information changes. We think this paragraph, as revised, furnishes adequate guidance so that preparation of the draft manual will be a meaningful exercise for the applicant. Another commenter said an applicant should be allowed to show sufficient competence and experience to manage a deepwater port by demonstrating knowledge of MMS regulations for OCS structures. We agree and have amended this paragraph accordingly.

§ 148.105(x). One commenter said that the environmental review criteria should consider air quality and incorporate relevant environmental statutes from adjacent coastal States. We think this paragraph and subpart G adequately reflect the applicant's need to describe how it will comply with all applicable environmental laws, including those related to air quality. The same commenter recommended a 10,000-year return period for evaluating the imposition of environmental loads, and requiring periodic reviews of assumptions used in the applicant's analysis. We think a 100-year return period conforms to international standards, and that 33 CFR part 148, subpart G provides the applicant with proper guidance for conducting its analysis. Two other commenters said we should allow the use of existing environmental studies in areas where the data sources are credible, reliable, and meet Coast Guard and Environmental Protection Agency (EPA) requirements for site-specific environmental analysis. We amended this paragraph accordingly. We define when existing surveys need to be supplemented by new data collection.

§ 148.107. Three commenters asked us to eliminate duplicative or obsolete antitrust-oriented language related to document filing, which we have done.

§ 148.108. One commenter asked us to consider costs and timing before complying with another agency's request for additional information. We have amended this section accordingly.

§ 148.110. One commenter said an applicant should be allowed to request advance environmental scoping meetings with relevant agencies. We have reworded this section to emphasize that anyone can consult with the Coast Guard about the requirements of this subchapter, including its environmental requirements; MARAD may also be available for such consultation. This commenter also recommended letting applicants coordinate the preparation and review of applications through memoranda of understanding with relevant agencies or similar mechanisms. In this section, we encourage applicants to confer with the Coast Guard and MARAD. We do not think a more formal mechanism is needed.

§ 148.115. We have reduced, from 15 to 6, the initial required number of printed copies of the application. Applications now must be sent in electronic format as well. This eases the paperwork burden on applicants, and recognizes the modern availability of electronic media. Additional print copies must still be supplied upon the request of a relevant agency. Our current best guess is that as many as 30 print copies may be requested, but the regulation contains no upper limit on this figure.

§ 148.125. Two commenters objected to the increased application fee and asked for controls on the amount of additional costs that can be assessed. We explained the rationale for raising the fee in the 2002 NPRM. We have amended this section to provide that applicants will receive periodic information about the costs of processing their applications.

§ 148.207. One commenter said we should make the publicly available documents for any deepwater port application available to the public through the Department of Transportation's Docket Management Facility. That is our current practice, which we expect to continue, either through the Docket Management Facility or some similar service. Should such a service become unavailable, the Coast Guard would still maintain its official docket and make it available for public inspection in accordance with this section.

§ 148.209. We added language specifying the key Federal and State agencies that receive copies of the application.

§ 148.211. We revised this section in conformance with changes we made to 148.115 (initial filings).

§ 148.215. We added language requiring the applicant to estimate the economic impact on a connected port that may be planning to deepen its draft channels.

§§ 148.276 and 148.277. One commenter recommended referencing DWPA's timeline for processing license applications, in order to emphasize the need for prompt action. We have amended these sections accordingly.

§ 148.279. We revised this section to eliminate possible confusion with the statutory requirements for issuing a deepwater port license, which are found in 33 U.S.C. 1503.

§ 148.305. One commenter said that we should allow the COTP to interpret and approve adjustments to operations manuals. We have revised this section, which is informational in nature, to refer readers to DWPA, which governs licensing. The actual license is issued by MARAD, whose rules and procedures can be consulted for further information.

§ 148.307. We deleted a reference to the Administrator of MARAD because the Coast Guard cannot make a rule for that agency. This does not imply a change in MARAD's policy of consulting with applicants.

§ 148.415. One commenter expressed support for our decision to delete the preliminary report requirement from this section.

§ 148.610. A section with this designation appeared in the 2002 NPRM. It specified the limit of liability for the one existing deepwater port, the Louisiana Offshore Oil Platform (LOOP). One commenter asked us to explain how LOOP's financial liability cap was determined and how the liability cap for future oil deepwater ports will be determined. Determination of LOOP's cap is discussed in the **Federal Register** at 60 FR 39849 (August 4, 1995). The Secretary's authority under 33 U.S.C. 2704(d)(2) to modify the statutory $350 million limit of liability for deepwater ports has been delegated to the Coast Guard. We have deleted this section from the temporary interim rule because it has no general applicability and was included only for informational purposes.

Subpart G (§ 148.700 *et seq.*). As explained earlier, this subpart contains material that formerly appeared as Appendix A to part 148. We believe the regulatory nature of much of this material is clarified by placing it in the textual body of part 148.

§ 148.702. One commenter asked for clarification of the criteria used in a Phase I determination under Appendix A. In this revised subpart, we no longer use the Phase I and Phase II terminology of former Appendix A.

§ 148.707. One commenter asked us to require tankers to use low-sulfur fuel, and also said we should take regional air quality into account. We think this section, which is informational in nature, correctly expresses the environmental criteria contained in DWPA and allows for a balanced assessment of a proposed port's environmental impact.

§ 148.720. One commenter recommended that construction be allowed even in areas with high pollutant or hazardous material levels, if the applicant shows some good cause

and demonstrates its ability to minimize adverse environmental impacts. This would not provide adequate protection against risks to the local ecosystem, so we continue to require applicants to identify viable alternative locations for proposed ports.

§ 148.730. One commenter said former Appendix A was overbroad in how it discouraged conflict with existing or planned land use, and said we should limit our scope to conflicts that adversely affect the environment. As revised, this section contains no absolutes, but evaluates proposals on how well they accord with existing or planned land use.

§ 149.1. One commenter said this part should require each deepwater port to be equipped with an Automatic Identification System (AIS). The commenter provided no rationale. At this time we see no need to mandate the use of AIS for deepwater ports.

§ 149.10. We revised this section to refer applicants to the Coast Guard Website for approved equipment and to refer to the Marine Safety Center's approval of engineering equipment.

§ 149.15. We added this section to inform applicants and licensees of their responsibilities when considering changes to a port.

§ 149.103. One commenter recommended removing requirements for discharge containment and removal equipment, since these are addressed in facility response plans. We agree and have amended this section accordingly.

§ 149.125. We expanded this section to account for natural gas facilities and provide further guidance.

§ 149.130. We added paragraph (c) to account for the possibility of an unmanned port.

§ 149.140. We added paragraph (b) to account for the possibility of an unmanned port.

§ 149.150. Two commenters addressed this section concerning receipt of vessel oil residues. One commenter recommended deleting the section or conforming it to former 33 CFR 149.321. The second commenter said a port should be capable of receiving oil residues from all vessels servicing it and that no waivers should be granted. We have removed this section because it is unnecessary in light of the promulgation of 33 CFR part 158 (Reception Facilities for Oil, Noxious Liquid Substances, and Garbage) in 1987. Waivers and alternatives are allowed under part 158; *see* 33 CFR 158.150.

Subpart C (§ 149.300 *et seq.*). As noted earlier, we revised this subpart by setting out in detail provisions, originally developed for the 1999 OCS Activities NPRM, that were only cross-referenced in the 2002 Deepwater Ports NPRM.

§ 149.304. In the 2002 Deepwater Ports NPRM we authorized the use of lifefloats as survival craft for deepwater ports. After further review, we have removed reference to lifefloats from this temporary interim rule because we find them unsuitable in terms of seaworthiness and personnel protection from the elements to operate in an exposed offshore environment.

§ 149.310. One commenter on the 1999 OCS Activities NPRM said the forerunner to this section improperly regulated workers rather than operators. Our revision of this section to make it less prescriptive eliminated the objectionable language.

§ 149.313. We modified this section as it appeared in the 1999 OCS Activities NPRM, to clarify that survival craft must be adequate to accommodate all persons authorized to berth on the facility, and to require craft to be located near the berthing area.

§ 149.314. One commenter said rescue boats should not need to meet SOLAS standards. We do not agree. Rescue boats need Coast Guard approval under approval series 160.156, and such boats meet SOLAS requirements. Deepwater ports (oil or natural gas) are located in exposed offshore locations where open and/or non-motorized boats approved under approval series 160.056 are not suitable, under 46 CFR 160.056.

§ 149.330. One commenter on the 1999 OCS Activities NPRM said that the forerunner to this section required ''consequential'' revision of another section, and said that the forerunner language improperly regulated workers rather than operators. We have revised this section to clarify that it is the operator who is regulated. Other revisions intended to make the temporary interim rule less prescriptive have eliminated the need for the requested consequential action. Another commenter on the 1999 NPRM said that in some circumstances deck suits provide better protection than work vests. The revised section allows the use of deck suits.

Subpart D (§ 149.400 *et seq.*). As noted earlier, we revised this subpart by setting out in detail provisions, originally developed for the 1999 OCS Activities NPRM, that were only cross-referenced in the 2002 Deepwater Ports NPRM.

§ 149.402. One commenter said Coast Guard approval for optional firefighting and lifesaving equipment is unnecessary if the equipment complies with industry standards. As explained previously, we are not ready to incorporate industry standards in this temporary interim rule. It is long-standing Coast Guard practice to inspect critical equipment designed to provide personnel safety, whether that equipment is optional or required. In an emergency, optional equipment may be used, in which case it must perform to the same standards as required equipment. We also restructured the section for better clarity.

§ 149.411. Two commenters on the 1999 OCS Activities NPRM referred to the forerunner of this section. One made no specific comment and the other said there is no need for firemen outfits since we do not require personnel to stay and fight fires. While there are some situations in which it will be inadvisable to stay and fight a fire, there will be other times when firefighting makes sense, and in those cases firefighters should be properly outfitted. We have revised the section, however, by eliminating details in favor of a cross reference to 46 CFR 108.497.

§ 149.412. One commenter on the 1999 OCS Activities NPRM referred to the forerunner of this section, and said that requiring fire axes makes sense only if we require personnel to stay and fight fires, which we do not. While there are some situations in which it will be inadvisable to stay and fight a fire, there will be other times when firefighting makes sense, and in those cases firefighters should be properly equipped.

§ 149.413. Two commenters on the 1999 OCS Activities NPRM referred to the forerunner of this section. One said we should not require systems to be approved, because the Coast Guard has no system approval process. This is not correct. Fire extinguishing equipment is approved by the Coast Guard under its ''approval series'' process, *e.g.* approval series 162.036 for fixed carbon dioxide fire extinguishing systems and approval series 162.162 for engineered inert gas fire extinguishing systems. This commenter also said that fixed systems to cover smaller galley ranges would be overkill and that we should set a minimum size in paragraph (b). We think ranges of any size pose a hazard that should be addressed by a fixed system and therefore we are retaining this requirement. The second commenter implied that we should include references to fire protection requirements for crude oil and flammable liquids with low flash points. We believe the section as revised provides adequate guidance, but applicants can consult with the Coast Guard if they need additional information about protection against specific hazards.

§ 149.415. We revised this section in keeping with our overall approach in this temporary interim rule, aligning manned deepwater port fire main system requirements with the 46 CFR part 108 requirements for such systems on mobile offshore drilling units.

§ 149.418. We revised this section in keeping with our overall approach in this temporary interim rule, removing several prescriptive elements contained in the 1999 OCS Activities NPRM.

§ 149.419. One commenter on the 1999 OCS Activities NPRM asked us to allow chemical firefighting systems in addition to water-based systems. We agree that chemical firefighting systems are important and have added this section, which mandates dry chemical systems.

§§ 149.420, 149.422. One commenter on the 1999 OCS Activities NPRM's forerunners to these sections asked us to grandfather their provisions. We do not address that request in this rulemaking because the only existing deepwater port is already considered to be in compliance with the temporary interim rule, and therefore grandfathering is not a relevant concern for deepwater ports.

Subpart E (§ 149.500 *et seq.*). One commenter noted that the Aids to Navigation (ATON) provisions contained in the 2002 NPRM may be unsuitable for future deepwater ports whose structures and platforms are not all located above the surface. We agree and have revised this subpart accordingly.

§§ 149.520 through 149.565. We have revised these sections, simplifying them wherever possible by referencing 33 CFR part 67 (Aids to Navigation on Artificial Islands and Fixed Structures) which we believe provides adequate guidance.

§ 149.535. Although other sections in this subpart have been eliminated or revised (*see* the general comment for Subpart E, above), we have retained this section's requirements for a rotating beacon to distinguish the deepwater port from other offshore facilities.

§ 149.540. One commenter recommended waiving ATON requirements for a simplified port structure consisting of submerged components. We have amended this section accordingly. We also added paragraph (c) and made other changes pertaining to submerged turret loading (STL) deepwater ports, which were not contemplated when we issued the 2002 NPRM.

§ 149.550. To aid in streamlining these rules, we revised this section to require compliance with the ''Navigation Rules'' that specifically address these lights.

§ 149.570. We revised this section to include requirements for identifying single point moorings and submerged turret loading buoys, which are potential features of future deepwater ports.

§ 149.580. Because future deepwater ports may not have pumping structures, we reworded this section so that the radar beacon is placed on the port's highest fixed structure.

§ 149.585. One commenter recommended requiring the sounding of a fog signal only when the visibility is considerably less than the present 5 nautical miles. This requirement, for a Class ''A'' structure such as a deepwater port, is set by 33 CFR 67.20–10(b); hence the comment is outside the scope of this rulemaking. We substituted ''sound'' signal for ''fog'' signal in this section to be consistent with international terminology.

§§ 149.615 and 149.620. One commenter suggested that initial design phase construction drawings and specifications be sent to the Marine Safety Center (MSC) rather than to the Commandant (G–M). For administrative reasons, these drawings and specifications should come to the Commandant (G–M). Upon receipt, a copy of the application and all attachments are sent to the Marine Safety Center. We have revised 149.620 to state that the Commandant (G–M) may engage or work cooperatively with MSC in evaluating technical matters.

§ 149.620. One commenter recommended that an applicant-selected classification society review and approve engineering and technical specifications for a deepwater port concept. The Coast Guard would review firefighting and lifesaving plans. Various classification societies have recently published guidelines for offshore LNG terminals. The Coast Guard will review and may accept class society guidelines as a basis for a particular port's design, but until we have completed a review and analysis of these guidelines, we are not prepared to accept them for approval standards. Once the guidelines have been reviewed the role of classification societies in the review or approval of deepwater port plans will be determined.

§ 149.625. Five commenters asked us to modify this section as it appeared in the 2002 NPRM, to allow the use of a greater range of standards. In keeping with the overall approach we have taken in the temporary interim rule, paragraph (a) now defines the performance we expect and allows each applicant to determine how best to achieve that performance. We neither prescribe nor preclude the use of industry or other outside standards.

§ 149.630. We deleted this section as unnecessary. Its substance is incorporated in §§ 149.640 and 149.641.

§ 149.641. One commenter on the 1999 OCS Activities NPRM was confused by our use of the term ''accommodation spaces'' in a forerunner to this section. We think the distinction between accommodation modules and the spaces they contain is clear from the definitions included in § 149.5. The commenter said we should limit our requirements to the location of accommodation spaces and modules, avoiding requirements on design (such as providing protection from blast effects) that were detailed elsewhere in the 1999 NPRM. We have not carried over those detailed design requirements to this temporary interim rule, and think this section properly addresses design considerations for deepwater ports. The commenter said our reference to hazardous or toxic substances in the forerunner to (b)(2) was unduly vague. Hazardous or toxic substances are those that could harm the health of a person in an accommodation space or module. Specific substances vary depending on the nature of the facility. Ports can also comply with (b)(2) by satisfying the alternative provisions now provided in paragraph (c). The commenter suggested deleting a reference to ''hydrogen sulfide'' in the forerunner to (b)(2); we agree that this specific Minerals Management Service-derived requirement is only needed where gas is expected to be present, and made the deletion for this temporary interim rule.

§ 149.650. We have revised this section to address novel or innovative engineering design, one of DPMA's key objectives.

§ 149.660. We adjusted the length of the continuous period required in (a), from 8 hours to 18 hours. The longer period is consistent with the requirements for non-passenger vessels on international voyages that are defined in 46 CFR 112.05–5, which was first promulgated several years after the original deepwater port regulations were issued in 1975.

§§ 149.690 through 149.692. One commenter suggested decoupling the provisions for means of escape from the 1999 OCS Activities NPRM, and said we should retain the existing (''old'') part 149 requirements. We have carefully reviewed the 1999 NPRM, adopting and adapting its proposals to the Deepwater Ports context. We believe that this approach is superior to continued reliance on our 1975 regulations.

One commenter on the 1999 OCS Activities NPRM said we should revise

the forerunner to 149.691 (d) so that unmanned facilities can substitute one or more secondary means of escape for a primary means of escape. Section 149.692 (e)(2) of this temporary interim rule accomplishes what the commenter requested. We also clarify that the secondary means of escape must be located in work areas.

§ 149.693. One commenter on the 1999 OCS Activities NPRM objected to NPRM's requirement that each deepwater port have at least two personnel landings. We agree that the requirement should be modified, and have revised this section so that it generally follows current 33 CFR 143.105.

§ 149.694. One commenter on the 1999 OCS Activities NPRM asked us to consider adding ''horizontal work surfaces'' to the ''decks'' covered by a forerunner to this section. As part of our overall updating of this section, we included a reference to 33 CFR 143.110 which covers ''floors'' as well as decks. We think this addresses the commenter's concern.

§ 149.696. We revised this section as it appeared in the 1999 OCS Activities NPRM by substituting a reference to 46 CFR 108.235 for the NPRM's more detailed specifications; we believe the referenced statute provides adequate guidance and that this approach is in keeping with our overall goal of updating deepwater port regulations.

§ 149.697. Five commenters addressed the forerunners to this section that appeared in the 1999 OCS Activities NPRM. Two made comments directed to the specific wording of those forerunners, which they believed affected substance; our general approach to industry standards, explained above, addresses one of these comments, and minor rewordings make the other comments irrelevant to this temporary interim rule. One commenter said the section should not apply to offshore supply vessels; OSVs are not covered by this temporary interim rule so we are not addressing that comment at this time. One commenter favored an 87 decibel threshold in order to screen out noises of little concern, and favored deleting the time weighted average. This commenter also said that a new survey should be triggered by the placement of equipment near, as well as in, an affected space. Triggering events for new surveys were detailed in the 1999 NPRM, but our performance-based temporary interim rule reserves this issue for treatment in each port's operations manual (*see* § 150.15(o)). Although the 1999 NPRM used an 87 decibel figure, we have lowered this to 85 decibels, for consistency with 46 CFR 58.01–50 and IMO Resolution A.468(XII). We also are retaining the time weighted average because that methodology is consistent with those authorities. The fifth commenter said we should require noise surveys only in marginal areas where it is not clear whether noise could be a problem, and favored simplifying signage requirements for high-noise areas. We have revised the requirements that appeared in the 1999 OCS so that the operator can specify the survey methodology it chooses. We believe the wording presently required for signage meets the commenter's desire for simplicity.

§ 150.10. One commenter asked us to protect certain critical information in the operations manual from disclosure under the Freedom of Information Act. Although the draft manual submitted with an application is placed in the public docket, where it is subject to the procedural protections afforded by part 148, subpart C, the detailed operations manual required before a port begins operations is reviewed exclusively within the Coast Guard and is not made public. Another commenter said the local COTP should approve the operations manual before it is reviewed by the Commandant (G–M). We believe consistency requires review to take place at the Commandant (G–M) level, but this section indicates that the Commandant (G–M) may consult with the local Officer in Charge, Marine Inspections (OCMI). One commenter asked whether we would allow a grace period for the operator of the one existing deepwater port to prepare an operations manual that conforms to this temporary interim rule. We consider the existing deepwater port to be in compliance with this rule, so that subsequent changes to that port's operations manual will be governed by paragraph (c) of this section.

§ 150.15. Several commenters recommended that we amend these rules to be less prescriptive and more performance-based, in the spirit of the Deepwater Port Modernization Act of 1996. They specifically requested that the NPRM's detailed requirements for personnel qualifications, port communications, vessel operations, cargo transfer operations, emergency procedures, *etc.,* be eliminated in favor of a general requirement that these topics be addressed by the applicant in the port operations manual required by this section. Now that deepwater ports may include natural gas facilities, we anticipate much greater variety in their operating requirements, and we think it is appropriate to give operators flexibility in planning for how they will address those requirements. Accordingly we have eliminated numerous specific provisions that appeared throughout part 150 in the NPRM. Now, the operations manual will be the vehicle for describing how a port will meet the standards set for each topic. In order to accommodate this change in approach, we have regrouped and expanded the language of this section; see for instance paragraphs (j), (k), (l), (o), (p), (q), (s), (t), (u), (v), (x), and (y).

§ 150.15(c). One commenter said we should clarify engineering and construction specifications that must be met prior to licensing, and indicate that certain specifications can be provided as post-licensing conditions. We believe the revised language of this section furnishes adequate guidance as to what needs to be in the operations manual. We added the second and third sentences because schematics are critical to our understanding of engineering and construction information.

§ 150.15(d). One commenter said we should require a deepwater port to maintain radio communications with helicopters transiting the safety zone. We agree that each port should describe its procedures for maintaining communication with nearby aircraft and have revised this paragraph accordingly.

§ 150.15(h). One commenter recommended that vessel squat be factored when determining certain net under-keel clearances (UKC). Although vessel squat is not explicitly mentioned in this paragraph, and it's likely to have negligible impact, we expect it to be included in figuring net UKC and to be shown in supporting documentation.

§ 150.15(i). One commenter said that, in addition to the tanker navigation procedures discussed in this paragraph, we should require a port to ''vet'' calling tankers for compliance with safety and environmental standards. We think this is a common practice in the energy industry, but decline to specify a vetting requirement here. Tank ships are already subject to U.S. and international regulations. A separate requirement for deepwater port vessels would be redundant of those regulations and also of part 150's provisions for ensuring personnel safety, professional proficiency, and environmental integrity.

§ 150.15(i)(7). Two commenters said the operations manual should define the deepwater port's weather limits. One said the manual needs to address the conditions for precautionary evacuation. We believe this paragraph meets these concerns.

§ 150.15(j). Three commenters supported moving various details of personnel titles and job descriptions to the operations manual. We believe this paragraph meets these concerns.

§ 150.15(l). One commenter recommended that a Person in Charge (PIC) be required for cargo transfer operations, to align with the Oil and Hazardous Materials in Bulk and OCS regulations. The operations manual now must discuss site-specific qualifications for a PIC.

§ 150.15(o). Four commenters addressed forerunners of this paragraph that appeared in the 1999 OCS Activities NPRM. One of these said the 1999 provisions impermissibly regulated workers rather than operators, and all four requested greater flexibility in our requirements for replacing worn personnel transfer nets. Because we have rewritten this section to provide deepwater port operators with flexibility in crafting their occupational health and safety training procedures, the specific language these commenters objected to does not appear in the temporary interim rule. One commenter asked us to use the term ''personnel transfer devices'' instead of ''personnel transfer nets.'' No reason was advanced in favor of the suggestion, though we note that another commenter on the 1999 NPRM remarked (also without explanation, and without referring to specific provisions of the 1999 NPRM) that the use of swing ropes as a means of transfer between vessels and platforms on the outer continental shelf deserves more standardization and study. Due to the unspecific nature of these comments and because at this time we think ''nets'' is sufficiently clear, we are retaining that terminology in the temporary interim rule.

§ 150.15(u). One commenter suggested that we require the operations manual to outline training requirements for emergency equipment operators. We have amended this paragraph accordingly.

§ 150.15(v). One commenter supported inclusion in the operations manual of a deepwater port security plan, developed in collaboration with the Coast Guard. This paragraph furnishes guidance for preparing a deepwater port security plan, and we encourage collaboration in its development.

§ 150.15(y). One commenter asked us not to require duplicative environmental monitoring in areas where monitoring already takes place in connection with other offshore activities. The operations manual can identify this sort of situation and prescribe only those monitoring measures that exceed those in use by other offshore facilities. Two commenters expressed concern over the ''open-ended'' nature of our requirements for environmental monitoring. We think the ongoing environmental monitoring outlined in paragraph (y) is important, but by allowing operators to set details of that monitoring in their operations manuals, we provide flexibility to address the concerns of these commenters.

§ 150.20. We added the first sentence to eliminate possible confusion between the requirements for draft and final operations manuals.

§§ 150.25 through 150.45. We revised these sections because the OCMI, not the COTP, is the proper Coast Guard official for amendments to the operations manual.

§ 150.30. Two commenters supported this section's approach in letting the COTP (now OCMI; *see* comment for §§ 150.25 through 150.45) approve amendments to the operations manual.

§ 150.50. We revised this section to address the addition of natural gas facilities. A natural gas deepwater port that also stores oil in quantity must develop an oil response plan as well as a natural gas facility emergency plan.

§ 150.100. One commenter said we should announce Coast Guard site inspections in advance and coordinate them with submission of the port's annual self-inspection report. As a regulatory agency, the Coast Guard reserves the right to conduct random, unannounced inspections to ensure facility compliance. However, this section does not require inspections. We have clarified this section to make clear that the OCMI may coordinate inspections with a port's annual self-inspection.

§ 150.105. One commenter pointed out the NPRM's inadvertent omission of paragraph (b)'s requirement for an annual self-inspection report, and another commenter asked us to clarify how to report equipment failures. We have corrected the omission, and will develop a new form, CG–5432A, that can be used for reporting self-inspections.

§ 150.110. At a commenter's suggestion, we added this section to reinstate requirements that appear in the 1975 regulations at 33 CFR 150.119 and 150.121. We wish to clarify that applicants can use a classification society other than the American Bureau of Shipping, and that we allow interim certification of innovative single-point moorings.

Subpart C (§ 150.200 *et seq.*). We streamlined this subpart by removing many detailed requirements that no longer reflect the variety of deepwater ports that may be anticipated. We expect port-specific details to be included in a port's operations manual. One commenter said this subpart should allow an applicant to work with the COTP in developing personnel requirements for the operations manual. Although we do not require such consultation, it is certainly appropriate and possible for an applicant to consult the COTP during this development.

Subpart D (§ 150.300 *et seq.*). We have complied with several requests to deal with matters such as radar surveillance, communications between port and vessels, and safety zone navigation restrictions in the operations manual rather than in regulations, because, in general, we think this is port-specific information best handled in the operations manual. However, we retain certain vessel navigation requirements in 33 CFR part 150, subpart D, because they pertain to all deepwater ports.

§ 150.305. We added this section because natural gas deepwater ports can be unmanned.

§§ 150.310, 150.320. We revised these sections to reflect the possibility of an unmanned natural gas deepwater port and to broaden their scope to include areas to be avoided in addition to safety zones, which are limited by international law to 500 meters.

§ 150.325. We revised this section to reflect changes in the advance notice of arrival reporting requirements found in 33 CFR part 160 and to include areas to be avoided in addition to safety zones, which are limited by international law to 500 meters.

§§ 150.330 through 150.350, 150.380. We revised these sections to include areas to be avoided in addition to safety zones, which are limited by international law to 500 meters.

§§ 150.365 through 150.375. We eliminated these three sections that appeared in the 2002 NPRM. Personnel titles and responsibilities now will be addressed by each operator in its operations manual.

§ 150.385. We revised this section because personnel titles and responsibilities now will be addressed by each operator in its operations manual.

§ 150.405. We reworded this section to reflect the addition of natural gas deepwater ports, and substituted the reference to 33 CFR 149.650 in paragraph (b) for references to industry standards.

§ 150.420. We revised this section in light of the addition of natural gas deepwater ports by referencing 33 CFR 127.405, and to reflect the treatment of

maintenance and repair provisions in each port's operations manual.

§ 150.425. Three commenters recommended transferring oil transfer procedures in this section to the operations manual. This is appropriate because these procedures are highly port-specific, and we have amended the section accordingly.

§§ 150.430, 150.435. One commenter said that the 2002 NPRM's 150.430, concerning connections to vessels, was too prescriptive. We deleted those provisions from this temporary interim rule. The current versions of 150.430 and 150.435 were revised in light of the addition of natural gas deepwater ports and the increased role of the operations manual in defining personnel titles and responsibilities.

§ 150.445. One commenter recommended deleting this section's requirement for displacing oil with water under certain conditions. We think it is important to retain the requirement, but a port may seek a waiver from the OCMI.

§ 150.500. We reworded this section to indicate that Subpart F's focus is on specific operational subsets rather than on operations generally.

§ 150.502. One commenter on the 2002 NPRM asked us to clarify whether repairs can be made without prior Coast Guard approval. Paragraph (f), which is based on the 1999 OCS Activities NPRM, explains that emergency repairs can be made without advance notification but that other repairs affecting the performance of lifesaving equipment must be preceded by notification. One commenter on the 1999 OCS Activities NPRM said that the forerunner to paragraph (e) should clarify that the operational lifeboats or rafts must be adequate to accommodate all persons on the deepwater port. We have retained the 1999 wording because we think it is sufficiently clear and that any revision risks greater confusion.

§ 150.503. Two commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. The first recommended a 4-year limit for survival craft falls under paragraph (c) instead of 5 years as provided for by the NPRM. This is consistent with Coast Guard rules for MODUs in 46 CFR 109.301 (j)(2), with IMO MODU Code 10.18.4, and with the requirements in SOLAS 74/83, chapter III, regulation 20.4.2, and we have revised the paragraph accordingly. The second commenter said we should lengthen inspection and replacement intervals because falls usually are located well above the wave zone. We think the 1999 NPRM intervals, as revised in (c), are required for safety and reflect the constant exposure of this equipment to the elements regardless of height above the wave zone.

§ 150.505. One commenter on the 1999 OCS Activities NPRM said that service intervals should be not less than every 5 years. This section allows a port either to follow manufacturer recommendations for intervals, or to set its own intervals in its planned maintenance program. We expect ports to set appropriate intervals, with manufacturer recommendations in mind. Ports may, but need not, agree with the commenter's suggested interval.

§ 150.514. One commenter on the 1999 OCS Activities NPRM's forerunner to this section said it needed to clarify that batteries should be replaced if their marked expiration date has passed. We have revised this section to make that point clearer.

§ 150.515. One commenter on the 1999 OCS Activities NPRM, apparently in reference to the forerunner of this section, suggested that monthly testing is excessive. We will not address the substance of this comment at this time, because neither the 1999 NPRM nor the temporary interim rule explicitly calls for monthly testing.

§ 150.517. Two commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. The first said that the ''person familiar'' should be the manufacturer's representative. The second said we should omit the requirement for the test supervisor's attestation. Manufacturer's representatives can be qualified to supervise tests, but we see no need to limit the pool of test supervisors to those persons. However, we retain the attestation requirement because it helps ensure that tests are supervised by persons with a proper degree of familiarity.

§ 150.518. One commenter on the 1999 OCS Activities NPRM advocated removing the requirement that a work vest, if no longer serviceable, be destroyed in the presence of a Coast Guard inspector. We have revised this section accordingly. We also reworded paragraph (a) to clarify that inspection by the owner or operator is mandatory.

§ 150.519. One commenter on the 1999 OCS Activities NPRM said weekly testing under paragraph (a) is excessive and that monthly tests would suffice. We have retained the weekly requirement because it is similar to the requirements for MODUs and cargo vessels in 46 CFR 109.211 (a)(1) and 46 CFR 97.15–30 (a). Conditions on deepwater ports are not sufficiently different to justify lesser frequency.

§ 150.520. One commenter on the 1999 OCS Activities NPRM said we should omit the requirement for testing fire extinguishers because the discharge needed for testing would destroy the device's usefulness pending recharging. We agree this is not the intended result, and have revised this section. It now cross references 46 CFR 31.10–18, which provides test methodologies adapted to the nature of different devices.

§ 150.555. One commenter said our rule should specify equipment standards for cranes. This new section ties the operation, maintenance, and testing of cranes to 46 CFR part 109.

§ 150.601. One commenter on the 1999 OCS Activities NPRM suggested we use ''hazardous conditions'' in place of ''hazards,'' because an operator can control conditions without necessarily eliminating hazards. Although the NPRM defined ''hazards'' so that only ''hazardous conditions'' were meant, in the interest of clarity we have revised this section to use the commenter's desired language. Another commenter on the 1999 NPRM said that the forerunner to this section improperly placed an employment-related duty on a ''holder of a lease or permit'' rather than on the employer. In the context of deepwater ports, we believe the port operator is the proper person to regulate and have worded this section accordingly.

§ 150.602. Two commenters on the 2002 NPRM supported our proposal for allowing voluntary safety and environmental management programs (SEMP) as an alternative to certain regulations on workplace safety and health, and a third commenter said we should make SEMP mandatory. We continue to see SEMP as a voluntary alternative and have added the second paragraph accordingly. One commenter on the 1999 OCS Activities NPRM reiterated its comment to the forerunner of 150.601, concerning employment-related duties, and we have revised this section as we revised 150.601.

§ 150.603. Five commenters addressed the forerunner to this section that appeared in the 1999 OCS Activities NPRM. One said it should not apply to offshore supply vessels (OSVs). OSVs are not covered by this temporary interim rule so we do not address that comment at this time. The four other commenters all said training requirements should be limited to basic safety training, and whatever is needed for the safety of others and performance of assigned duties, or else requested similar limiting language. In keeping

with this rulemaking's general approach, this section now requires training to be addressed in each port's operations manual.

§ 150.607. We reworded paragraph (b) to clarify that machinery and equipment must be either kept in proper working order or removed from the port.

§ 150.608. One commenter on the 1999 OCS Activities NPRM said that the forerunner to this section improperly placed an employment-related duty on a ''holder of a lease or permit'' rather than on the employer. In the context of deepwater ports, we believe the port operator is the proper person to regulate and have worded this section accordingly.

§ 150.609. Four commenters on the 1999 OCS Activities NPRM addressed the forerunner to this section. Three of these criticized the requirement that eye and face protectors carry informational markings, because markings eventually wear out. The temporary interim rule aligns our requirements with those of the Occupational Safety and Health Administration (OSHA) which are widely used in industry; we consider them sufficient for the deepwater port context. One commenter said the forerunner version regulated workers rather than operators. We have reworded this section to clarify that it is the operator that is being regulated. One commenter suggested reference to latest available standards; instead, we now require compliance with 29 CFR 1910.133, which should furnish the commenter with ample current guidance.

§ 150.610. One commenter on the 1999 OCS Activities NPRM asked that we delete the requirement that emergency equipment be positioned near the drill floor and in mudrooms. The revised language of this section continues to require positioning ''where there is a reasonable probability that eye injury may occur'' but, due to the expected variation in deepwater port design, our rule neither prescribes nor precludes which areas will meet that standard.

§ 150.611. One commenter on the 1999 OCS Activities NPRM said the forerunner to this section regulated workers rather than operators. We have reworded the section to clarify that it is the operator that is being regulated. Another commenter on the 1999 NPRM recommended that we set a ''reasonable probability'' standard for applying this section. That standard is used in 150.610 and 150.612 and we have revised this section to use that standard as well.

§ 150.612. Four commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. One said it regulated the worker rather than the operator. To prevent confusion on that count we have reworded the section. Three commenters criticized the requirement that footwear carry informational markings, because markings eventually wear out. The temporary interim rule aligns our requirements with OSHA's, which are widely used in industry; we consider them sufficient for the deepwater port context. Two commenters asked for other substantive changes in the requirement that are no longer relevant in light of the new OSHA-referenced language.

§ 150.613. Four commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. One said it regulated the worker rather than the operator while another joined the first commenter in pointing out that workers cannot tell if they are in a qualifying area unless it is posted; we reworded the section to prevent confusion as to who is regulated. The second commenter also said a reference to 46 CFR is needed to prevent confusion or conflict with rules affecting machinery spaces on inspected vessels. We do not think confusion or conflict is likely and have not referenced 46 CFR in this section. A third commenter favored lowering the 87-decibel limit provided in the NPRM to 83 decibels, while a fourth suggested removing references in the forerunner section to time weighted averages and specific industry standards. Our adoption of an 85-decibel limit and retention of time weighted averages is explained in the discussion of 149.697 above. We have adopted the OSHA standard for this section because of its widespread use in industry.

§ 150.614. Four commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. One said it regulated the worker rather than the operator; we reworded the section to prevent confusion as to who is regulated. Three commenters said that the 1999 NPRM improperly required protection for persons who may be in a hazardous area without actually being exposed to risk. A fourth commenter also objected to the 1999 language and asked that this section address only hazards routinely protected against by industry. We agree with all four commenters that, for deepwater ports, this section should address only persons who are actually exposed to risk, and we have reworded the section accordingly. We did not adopt the fourth commenter's suggestion because the section is meant to reach risks beyond those that are routinely protected against by industry.

§ 150.615. Two commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. Both asked for clarifying language as to which lockout and tagging procedures must be observed; we agree that for deepwater ports conjunctive and not disjunctive language is appropriate and have made the necessary revision. One commenter said the 1999 NPRM regulated the worker rather than the operator; we reworded this section to prevent confusion as to who is regulated.

§ 150.616. One commenter said the forerunner of this section that appeared in the 1999 OCS Activities NPRM improperly regulated the worker rather than the operator; we reworded the section to prevent confusion as to who is regulated. Another commenter on the 1999 NPRM said we should merely supply a ''general duty clause statement'' and pointed out that the 1999 tagout provisions applied only to electrical equipment. We believe the performance based language of the temporary interim rule addresses this commenter's first comment, and we reworded §§ 150.616 and 150.617 to apply to electrical, hydraulic, mechanical, and pneumatic equipment.

§ 150.617. Three commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. One said that it improperly regulated workers rather than operators; we reworded the section to prevent confusion as to who is regulated. This commenter also suggested that we require tags to conform to a specific industry standard. As discussed earlier, we are not ready to specify industry standards in this temporary interim rule. The second commenter said that the person who places the tag and the person who authorizes it should be identical. While this is generally the case, for operational flexibility we retain language from the 1999 NPRM that allows a tag to be removed by the person who placed it, as well as by that person's supervisor or by a relief person. The third commenter said we should merely supply a ''general duty clause statement'' and pointed out that the 1999 tagout provisions applied only to electrical equipment. We believe the performance based language of the temporary interim rule addresses this commenter's first comment, and we reworded §§ 150.616 and 150.617 to apply to electrical, hydraulic, mechanical, and pneumatic equipment.

§ 150.618. Three commenters addressed the forerunners of this section

that appeared in the 1999 OCS Activities NPRM. One said that the 1999 language improperly regulated workers rather than operators; we reworded this section to prevent confusion as to who is regulated. This commenter also suggested that engineering controls be given precedence over other measures for keeping exposure within permissible limits. We decline to adopt that suggestion because this temporary interim rule gives the operator flexibility to determine how it will implement measures that this section requires. The other commenters said that the forerunner to paragraph (a) should be broadened to cite references, other than material safety data sheets, that define permissible exposure. Our revision of (a) provides a broader basis for determining permissible exposure.

§ 150.619. Six commenters addressed the forerunners of this section that appeared in the 1999 OCS Activities NPRM. Two commenters said they were inapplicable to offshore supply vessels (OSVs), and two commenters remarked on a possible conflict with other provisions affecting inspected vessels. This temporary interim rule does not pertain to OSVs or inspected vessels so we do not address these comments at this time. One commenter said the 1999 NPRM regulated the worker rather than the operator; we reworded this section to prevent confusion as to who is regulated. Two commenters said that the 1.8 meter limit provided by this section unjustifiably sets a more stringent standard than the present 10 foot limit in 33 CFR 142.42. We adopted the new limit for consistency with OSHA standards (*see* 29 CFR 1926.501(b)(1)). One commenter objected that the 1999 language required the use of fall arrests even when there is no hazard of falling. The revised section clearly targets ''risks of falling.'' Three commenters suggested changes in the 1999 provisions regarding the reuse of personal fall arrest systems. We have revised this section to remove conditions required for reuse. The operations manual discussion of maintenance procedures will need to show how a system is maintained in good working condition once it has been used. One commenter found our use of the phrase ''irregular surfaces'' to be vague. Due to the variation we expect in the design of deepwater ports, we have not attempted a more precise definition, but the degree to which a surface's irregularity presents a risk can be estimated by comparing the likely impact of a fall onto such a surface with the likely impact of other falls mentioned in the section, *i.e.*, falls onto exposed moving components, electrically energized cables or connectors, or water. One commenter said the Coast Guard cannot effectively regulate fall protection using the methods described in the 1999 NPRM, and favored substituting a ''general duty clause'' requiring employers to develop fall protection programs in keeping with applicable industry standards and specific deepwater port needs. We have revised the 1999 NPRM's language so that the temporary interim rule is less prescriptive and gives operators more flexibility in determining how to protect personnel from falls. One commenter asked us to consider requiring protective measures to prevent slipping in any area that is frequently wet. As revised, the temporary interim rule requires operators to take measures to control the risk of falling, tripping, or slipping due to loose material or wet conditions, including spills.

§ 150.620. Two commenters addressed the forerunners of this section that appeared in the 1999 OCS Activities NPRM. One said that the 1999 language improperly regulated workers rather than operators; we reworded this section to prevent confusion as to who is regulated. The other said this section should exempt rotating drilling equipment because proper safety training is more effective than machine guards. For the deepwater port context, we believe the revised wording of this section gives operators sufficient flexibility in how they provide adequate protection.

§ 150.621. Four commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. Three commenters suggested referencing an industry standard; as explained earlier we are not ready to include industry standards in this temporary interim rule. Two commenters said the 1999 language required tagout of slings but did not detail instructions for tagout. As revised, this section now references 29 CFR 1910.184, which describes the information needed when tagging defective slings. Two commenters said that the size and grade information we called for in 1999 is irrelevant. We have revised this section accordingly. One commenter said our rule should merely provide a general duty statement, and that current industry standards allow slings to sustain some damage before they are replaced. This section as revised is general in its terms, and the regulation it references (29 CFR 1910.184) provides clear guidance as to the type of damage necessitating immediate removal of a sling from service.

§ 150.622. Two commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. Both commenters objected to referencing electrical tagout requirements in a way that implied broader applicability. For deepwater ports, we think our intention for warning signs is adequately met by referencing OSHA regulations at 29 CFR 1910.144 and 1910.145, and thus we have deleted the objectionable language. One commenter asked us to reference industry standards. As explained earlier, we are not ready to reference specific industry standards in this temporary interim rule. The second commenter asked us to grandfather existing signs. Because the only existing deepwater port is in compliance with this temporary interim rule, grandfathering is not pertinent in the deepwater port context.

§ 150.623. One commenter on the 2002 NPRM said that the incorporation by reference of 1999 OCS Activities NPRM provisions meant that operators had to insure the presence of intermediate level emergency medical technicians during confined space entry operations, and objected to that requirement. In keeping with our overall performance-based approach to this temporary interim rule, we now require that the operator address in its operations manual any personnel issues related to confined space entry operations.

Ten commenters addressed the forerunners of this section that appeared in the 1999 OCS Activities NPRM. Seven commenters said all or substantial portions of our confined space safety proposals were excessive or unnecessary and should be replaced with industry standards; one commenter said the 1999 proposals would significantly increase the regulatory burden on industry with no improvement in and possible degradation to safety performance. We disagree with these comments. As noted in the 1999 NPRM at 64 FR 68430, a National Offshore Safety Advisory Committee (NOSAC) working group recommended that OCS activities rules cover work in confined spaces, and be based on Occupational Safety and Health Administration (OSHA) rules in 29 CFR 1910.146, 29 CFR part 1915, and on 46 CFR subpart 91.50. We substantially consolidated and reworded the 1999 confined space provisions in the interest of providing deepwater port operators with increased flexibility. This eliminated the specific requirements that some of these commenters found objectionable. Nevertheless, we continue to follow the

NOSAC recommendation and require port operators to structure their confined space safety programs consistently with OSHA standards. One commenter said these provisions should be inapplicable to offshore supply vessels, while another said these provisions were inadequate to protect workers on OSVs. This temporary interim rule does not apply to OSVs so we do not address these comments at this time. Three commenters requested changes in specific requirements that have been eliminated from this temporary interim rule in keeping with our performance based approach for deepwater ports.

§ 150.624. Three commenters addressed the forerunner of this section that appeared in the 1999 OCS Activities NPRM. One said it was inapplicable to offshore supply vessels. This temporary interim rule does not apply to OSVs so we do not address that comment at this time. The second commenter asked us to clarify when protective measures must be taken so that training programs could be tailored accordingly, and the third commenter suggested we add more detailed guidelines and procedures. We have revised this section so that it references an OSHA rule, 29 CFR 1910.1030, which provides detailed guidance for making exposure determinations and for protective measures, and which should address these commenters' concerns.

§ 150.715(b). We amended this paragraph relative to single-point moorings, in order to avoid confusing the treatment appropriate for conventional (surface) single-point moorings with the treatment of submerged turret-loading system buoys.

§ 150.720. We reworded this section for clarity.

§ 150.805. We revised the point-of-contact from the Commandant (G–M) to the OCMI because any site inspection will take place at the local level.

§ 150.815. We revised the description of personal injuries that require filing a casualty report to better align the requirements for deepwater ports with those for reporting marine casualties on vessels under 46 CFR 4.05–1.

§ 150.820. We changed the time for filing a written report from 10 days to 5 days, better aligning this section with the requirements for vessel marine casualty reports in 46 CFR 4.05–10.

§ 150.845. We removed specific positions from this section because such port-specific information will now be specified in the operations manual.

Subpart J (§ 150.900 *et seq.*). We broadened these sections to include no-anchoring areas and areas to be avoided, because international law limits safety zones to 500 meters. We anticipate that deepwater ports may want to establish larger zones in which traffic can be made safe, through advisory if not mandatory means.

Regulatory Evaluation

This temporary interim rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this temporary interim rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard is revising the regulations governing deepwater ports. They were written at a time when no deepwater ports existed on which to base regulations. Furthermore, the 1975 regulations applied only to deepwater ports that handle oil. This temporary interim rule is necessary to update the regulations with current technology, industry standards, and to incorporate recent statutory changes adding natural gas to the Deepwater Port Act. It will also align deepwater port regulations with relevant safety regulations that have been proposed for other fixed offshore facilities regulated under 33 CFR Subchapter N.

We expect the costs of this temporary interim rule to have a nominal effect on the owners and operators of deepwater ports. Currently, there is only one licensed and operating deepwater port, the Louisiana Offshore Oil Port (LOOP). We consider LOOP to be in compliance with the provisions of this rule. LOOP represents industry standards for deepwater ports, aside from some operating and firefighting differences relevant to natural gas deepwater ports and small unmanned deepwater ports.

Based upon discussion with industry, we anticipate fewer than 10 deepwater ports will be licensed and operating within the next 10 years. We expect that these new entrants will follow existing industry standards and, therefore, will incur at most the same costs as the existing compliant deepwater port. We assume that no deepwater port will be larger or more extensive than LOOP, and therefore none will incur any additional costs. We also assume that the design and construction of new deepwater ports (manned or, to the extent applicable, unmanned) will follow the industry standard for manned deepwater ports.

The temporary interim rule is also consistent with the deepwater port industry's request to have its regulations aligned with the current industry standards and future OCS regulations. Hence, the benefits are the result of updating and removing any regulations that are obsolete or unnecessary.

We expect no new collection of information burden to be placed on the affected entities because industry is already compliant with safety and training reporting activities. The Coast Guard considers that the reporting requirements established by current industry practice will aid its ability to enforce regulations, thereby promoting the safety of life and property on deepwater ports. Furthermore, by recording training and safety inspection information, deepwater ports will increase their own safety level by improving accident readiness, noise level awareness, and lifesaving equipment preparation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary interim rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There is one entity composed of large multinational corporate owners that operates the existing deepwater port, LOOP. The North American Industry Classification System (NAICS) code for LOOP is 488320, Marine Cargo Handling. According to the Small Business Administration's definition, a company with this NAICS code and earning revenue less than $18.5 million per year is considered a small entity. LOOP does not qualify as a small entity because its gross revenue exceeds $18.5 million. We assume that new industry entrants will be comparable in size to LOOP with large corporate ownership and, thus, will not be small businesses.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary interim rule will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management

Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Robert Spears, Project Development Division (G–MSR–2), telephone 202–267–1099, fax 202–267–4547.

Collection of Information

This temporary interim rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary interim rule under that Order and have determined that it does not have implications for federalism. This rule applies to deepwater ports only in waters beyond the territorial limits of the United States (33 U.S.C. 1501(a)(1)). As regulation of these deepwater ports is beyond State seaward boundaries, this rule will not preempt State law.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this temporary interim rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Indian Tribal Governments

This temporary interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this temporary interim rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Taking of Private Property

This temporary interim rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This temporary interim rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this temporary interim rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Environment

We have considered the environmental impact of this temporary interim rule and concluded that, under figure 2–1, paragraphs (34)(a), (c), (e), and (i), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The environmental impact associated with requiring additional equipment, training, safety inspections and recordkeeping under this rule will have an insignificant impact on the environment and will benefit the environment by requiring safe operations of deepwater ports. The environmental impact of each deepwater port applicant is assessed under the licensing process. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 148

Administrative practice and procedure, Environmental protection, Harbors, Petroleum.

33 CFR Part 149

Fire prevention, Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution.

33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard revises 33 CFR chapter I, subchapter NN, as follows:

SUBCHAPTER NN—DEEPWATER PORTS

PART 148—DEEPWATER PORTS: GENERAL

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Authority: 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

Subpart A—General

§ 148.1 What is the purpose of this subchapter?

This subchapter prescribes regulations for the licensing, construction, design, equipment, and operation of deepwater ports under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524) (the Act).

§ 148.2 Who is responsible for carrying out this subchapter?

Unless otherwise specified, the owner of a deepwater port must ensure that the requirements of this subchapter are carried out at that port.

§ 148.3 What Federal agencies are responsible for carrying out the Deepwater Port Act?

Under delegations from the Secretary of Homeland Security and the Secretary of Transportation, the Coast Guard and the Maritime Administration (MARAD) coordinate with each other in processing applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port. MARAD is responsible for issuing, revoking, and reinstating deepwater port licenses. MARAD also has authority over the approval of fees charged by adjacent coastal States and certain matters relating to international policy, civil actions, and suspension or termination of licenses. The Secretary of Transportation has delegated authority over pipeline matters to the Research and Special Programs Administration (RSPA).

§ 148.5 How are terms used in this subchapter defined?

As used in this subchapter:

Act means the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524).

Adjacent coastal State means any ''coastal State'' that

(1) Would be directly connected by pipeline to a ''deepwater port'';

(2) Would be located within 15 miles of a ''deepwater port''; or

(3) Is designated as an ''adjacent coastal State'' by the Administrator of the Maritime Administration under 33 U.S.C. 1508(a)(2).

Administrator of the Maritime Administration means the Associate Administrator, Port, Intermodal and Environmental Activities, Maritime Administration, or that individual's authorized representative, at 400 Seventh Street SW., Washington, DC 20590, telephone 202–366–4721.

Affiliate means a ''person'':

(1) That has an ownership interest, direct or indirect, of more than 3 percent in an ''applicant'';

(2) That offers to finance, manage, construct, or operate the ''applicant's'' ''deepwater port'' to any significant degree;

(3) That owns or ''controls'' an ''applicant'' or an entity under paragraphs (1) or (2) of this definition; or

(4) That is owned or ''controlled'' by, or under common ownership with, an ''applicant'' or an entity under paragraphs (1), (2), or (3) of this definition.

Applicant means a ''person'' that is the owner of a proposed deepwater port and that is applying for a license under this part for that port.

Application means an application submitted under this part for a license to own, construct, and operate a deepwater port.

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of 46 CFR chapter I, subchapter Q, the approval series corresponds to the number of the subpart. A list of approved equipment, including all of the approval series, is available at *http://cgmix.uscg.mil/Equipment.*

Approved means approved by the ''Commandant (G–M)''.

Area to be avoided means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships or certain classes of ships. An area to be avoided may be either mandatory, where navigation is prohibited or subject to conditions imposed by competent authority, or recommendatory, in which ships should navigate with caution in light of the specially hazardous conditions presented. In either case, the nature of the area (whether mandatory or recommendatory) will be identified to mariners.

Barrel means 42 U.S. gallons (159 liters) at atmospheric pressure and 60° Fahrenheit (15.56° Celsius).

Captain of the Port or *COTP* means a Coast Guard officer who commands a Captain of the Port zone described in part 3 of this chapter and who is immediately responsible for enforcing port safety and security and marine environmental protection regulations within that area.

Certified Industrial Hygienist means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

Certified Marine Chemist means a marine chemist who is certified by the National Fire Protection Association.

Citizen of the United States means:

(1) Any person who is a United States citizen by law, birth, or naturalization;

(2) Any state, any agency of a State or a group of States; or

(3) Any corporation, partnership, or other association:

(i) That is organized under the laws of any State;

(ii) Whose president, and chairman of the board of directors, and general partners or their equivalents, are persons described in paragraph (1) of this definition; and

(iii) That has no more of its directors who are not persons described in paragraph (1) of this definition than constitute a minority of the number required for a quorum to conduct the business of the board of directors.

Coastal environment means the coastal waters (including the lands in and under those waters), internal waters, and the adjacent shorelines (including waters in and under those shorelines). The term includes, but is not limited to, transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; fish, wildlife, and other living resources of those waters and lands; and the recreational and scenic values of those lands, waters, and resources.

Coastal State means a State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans or the Gulf of Mexico.

Commandant (G–M) means the Assistant Commandant for Marine Safety, Security and Environmental Protection, or that individual's authorized representative, at Commandant (G–M), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

Confined space means a space that may contain a dangerous atmosphere, including a space that:

(1) Has poor natural ventilation, such as a space with limited openings (*e.g.*, cofferdam, double bottom tank); or

(2) Is not designed for continuous occupancy by personnel.

Construction means the supervising, inspection, actual building and all other activities incidental to the building, repairing, or expanding of a ''deepwater port'' or any of its components. The term includes, but is not limited to, fabrication, laying of pipe, pile driving and bulk heading and alterations, modifications, or additions to the ''deepwater port''.

Control means the power, directly or indirectly, to determine the policy, business practices, or decision-making process of another ''person'', whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or by other means.

Crude oil means a mixture of hydrocarbons that exist in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and includes:

(1) Liquids technically defined as crude oil;

(2) Small amounts of hydrocarbons that exist in the gaseous phase in natural underground reservoirs but are liquid at atmospheric pressure after being recovered from oil well (casing head) gas in lease separators; and

(3) Small amounts of non-hydrocarbons produced with the oil.

Dangerous atmosphere means an atmosphere that may expose personnel to the risk of death, incapacitation, injury, or acute illness or may impair ability to escape from the atmosphere unaided.

Deepwater port means any fixed or floating manmade structures other than a vessel, or any group of structures, located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in the Deepwater Port Act of 1974, as amended, and for other uses not inconsistent with the purposes of that Act, including transportation of oil or natural gas from the United States outer continental shelf. The term includes all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark. In the case of natural gas, the term includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities which are proposed and/or approved for construction and operation as part of the deepwater port, to the extent that they are located seaward of the high water mark and do not include interconnecting facilities. A deepwater port shall be considered a ''new source'' for purposes of the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*).

District Commander means an officer who commands a Coast Guard District described in part 3 of this chapter or that individual's authorized representative.

Emergency medical technician (EMT) means a person trained and certified to appraise and initiate the administration of emergency care for victims of trauma or acute illness before or during transportation of the victims to a health care facility via ambulance, aircraft or vessel.

Engineering hydrographic survey means a detailed geological analysis of seabed soil samples performed to determine the physical composition (*e.g.*, mineral content, etc.) and structural integrity for the installation of offshore components and structures.

Governor means the Governor of a ''State'' or the ''person'' designated by State law to exercise the powers granted to the Governor under the Act.

Gross under-keel clearance means the distance between the keel of a tanker and the ocean bottom when the tanker is moored or anchored in calm water free of wind, current, or tide conditions that would cause the tanker to move.

Hose string means the part of a ''single point mooring oil or natural gas transfer connection'' made out of flexible hose of the floating or float/sink type that connects the tanker's manifold to the ''single point mooring''.

Hot work means work that produces heat or fire, such as riveting, welding, burning, or other fire or spark producing operations.

Lease block means an area established either by the Secretary of the Interior under section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) or by a State under section 3 of the Submerged Lands Act (43 U.S.C. 1311).

License means a license issued under this part to own, construct, and operate a deepwater port.

Licensee means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed under this subchapter.

Marine environment includes the ''coastal environment,'' waters of the contiguous zone, the exclusive economic zone, and the high seas; fish, wildlife, and other living resources of those waters; and the recreational and scenic values of those waters and resources.

Marine site means the area in which the deepwater port is located, and includes the safety zone, attendant ships' routes, anchorages and all areas seaward of the high water mark in which associated components and equipment of the deepwater port are located.

Maritime Administration (or *MARAD*) means the Administrator of the Maritime Administration or that person's designees.

Metering platform means a manned or unmanned platform consisting of either a fixed or floating structure that serves as an interchange site for controlling the rate of transfer of natural gas from vessel to pipeline.

Natural gas means either natural gas unmixed, or any mixture of natural or artificial gas, including compressed or liquefied natural gas.

Net under-keel clearance means the distance between the keel of a tanker and the ocean bottom when the tanker is underway, anchored, or moored and subject to actual wind, waves, current, and tide motion.

No anchoring area means a routing measure comprising an area within defined limits where anchoring is unsafe, unstable, or particularly hazardous or could result in unacceptable damage to the marine environment. Anchoring should be avoided by all ships or certain classes of ships in a no anchoring area.

Officer in Charge, Marine Inspection, or *OCMI* means an individual who commands a Marine Inspection Zone described in part 3 of this chapter and who is immediately responsible for the performance of duties with respect to inspections, enforcement, and administration of regulations governing a deepwater port.

Offshore competent person means an individual trained and designated by his or her employer in matters relating to confined-space pre-entry testing and certification at a deepwater port, prior to entry. An offshore competent person should demonstrate proficiency in the following criteria—

(1) Hazard description and recognition;

(2) Hazard evaluation and measurement;

(3) Hazard prevention;

(4) Control and elimination; and

(5) Practical application simulation.

Oil means petroleum, crude oil, and any substance refined from petroleum or crude oil.

Operator means the person who is licensed under 33 U.S.C. 1503 to own, construct, and operate a deepwater port, or that person's designee.

Person means an individual, a public or private corporation, a partnership or other association, or a government entity.

Personnel means individuals who are employed by licensees, operators, contractors, or subcontractors and who are on a deepwater port by reason of their employment.

Pipeline end manifold means the pipeline end manifold at a ''single point mooring.''

Platform means a fixed structure that rests on or is embedded in the seabed and that has floors or decks where an activity or specific function may be carried out.

Pumping platform complex means a ''platform'' or a series of interconnected ''platforms'', exclusive of a deepwater port, consisting of one or more single point moorings (SPM) or submerged turret loading buoys (STL) that can pump oil or natural gas and that has one or more of the following features or capabilities:

(1) Can handle the mooring and loading of small ''vessels'';

(2) Has berthing and messing facilities; and

(3) Has a landing area for helicopters.

Reconnaissance hydrographic survey means a scientific study of fresh and salt-water bodies, currents and water content, cultural resources and seabed soils. A visual representation of the survey findings is normally depicted on a chart of the examined area.

Routing measures means any system of one or more vessel routes or routing schemes aimed at reducing the risk of casualties. It includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, and deepwater routes.

Safety zone means the safety zone established around a deepwater port under part 150, subpart J, of this chapter.

Single point mooring (SPM) means an offshore berth that links an undersea pipeline to a tanker moored to the mooring and allows for the transfer of oil or natural gas between the tanker and the pipeline.

Single point mooring-oil transfer system (SPM-OTS) or single point mooring-natural gas transfer system (SPM-NGTS) means the part of the oil or natural gas transfer system from the ''pipeline end manifold'' to the end of the ''hose string'' that connects to the tanker's manifold.

State includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Support vessel means a vessel working for a licensee at a deepwater port or cleared by a licensee to service a tanker calling at a deepwater port, and includes a:

(1) Tug;

(2) Line-handling boat;

(3) Crew boat;

(4) Supply vessel;

(5) Bunkering vessel;

(6) Barge; or

(7) Other similar vessel.

Survival craft means a craft capable of sustaining the lives of persons in distress after abandoning a deepwater port. The term includes lifeboats, life rafts, buoyant apparatus, and survival capsules. The term does not include rescue boats, unless the rescue boats are also ''approved'' as lifeboats.

Tanker means a vessel that calls at a ''deepwater port'' to unload oil or natural gas.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on or through the water.

Subpart B—Application for a License

§ 148.100 What is the purpose of this subpart?

This subpart describes how to apply for a license to own, construct, and operate a deepwater port.

§ 148.105 What must I include in my application?

Your application must include the information required by paragraphs (a) through (cc) of this section.

(a) For each applicant, affiliate, and consultant:

(1) The name, address, telephone number, citizenship, and principal business activity of the applicant and its affiliates;

(2) The name, address, and principal business activity of each subsidiary or division of the applicant or its affiliates that participated in the decision to apply for a license to build a deepwater port;

(3) A description of how each affiliate is associated with the applicant and of the ownership interest each affiliate has in the applicant;

(4) A list of corporate officers and directors of the applicant and each affiliate that participated in the decision to apply for a license to build a deepwater port;

(5) A statement on the applicant's and each affiliate's history for the last 5 years, including:

(i) Any bankruptcy filing, their dates, and statuses in the event the activity results in reorganization;

(ii) Any violations of State or Federal laws; and

(iii) Outstanding litigation that relates to, or could materially affect, information in the license application; and

(6) A declaration regarding lobbying activities on behalf of either the applicant or an affiliate under 31 U.S.C. 1352.

(b) *Experience in matters relating to deepwater ports.* (1) A description of the experience of the applicant, its affiliates, and its consultants in offshore operations, particularly operations involving the transfer and storage of liquid cargo and the loading and unloading of vessels.

(2) For each affiliate with which the applicant has made a significant contract for the construction of any part of the deepwater port, a description of that affiliate's experience in construction of marine terminal facilities, offshore structures, underwater pipelines, and seabed foundations and a description of other experiences that would bear on the affiliate's qualification to participate in the construction of a deepwater port.

(c) *The identity of each engineering firm, if known, that will design the deepwater port or a portion of the port.* The firm's:

(1) Name;

(2) Address;

(3) Citizenship;

(4) Telephone number; and

(5) Qualifications.

(d) *United States citizenship.* (1) As used in this paragraph (d) the terms ''president,'' ''chairman,'' ''directors,'' and ''board of directors'' (or ''board'') refer to those officers and boards or their equivalents by whatever means they may be known. References to ''charters,'' ''certificates,'' or other documents refer to legally sufficient documents by those names or their equivalents.

(2) If the applicant is an individual citizen of the United States by law, birth, or naturalization, or a group of such individuals, submit an affidavit of U.S. citizenship from each individual.

(3) If the applicant is a State agency of a State, or a group of states, submit the law or laws authorizing the applicant to undertake the operations detailed in the application.

(4) If the applicant is a private corporation, submit its current charter or certificate of incorporation; its current by-laws; and affidavits of citizenship (U.S. or foreign) from its president, chairman of the board of directors and each director.

(5) If the applicant is a partnership or association not formed or owned solely by individual citizens of the United States, submit its certificate of formation; its partnership agreement or articles of association; its current by-laws; the minutes of its first board meeting; and affidavits of citizenship (U.S. or foreign) from the president and each director.

(e) *Address for service of documents.* The name and address of one individual who may be served with documents in case a formal hearing is held concerning the application, and the name and address of one individual who may receive other documents.

(f) *Location and use.* The proposed location and capacity of the deepwater port and a general description of the anticipated use of the port.

(g) *Financial information.* (1) For the applicant and each affiliate with an ownership interest in the applicant of greater than 3 percent, and affiliates which have a direct contractual relationship with the deepwater port:

(i) Annual financial statements, audited by an independent certified public accountant, for the previous 3 years, including, but not limited to, an income statement, balance sheet, and cash flow statement with footnote disclosures prepared according to U.S. Generally Accepted Accounting Principles; provided, however, that the Commandant (G–M), in coordination with MARAD, may waive this requirement upon finding that the affiliate does not in the normal course of business produce audited statements and is part of a larger corporate group whose audited statement provides sufficient information to support an adequate assessment of the affiliate's relationship with and impact on the applicant; and

(ii) Interim income statements and balance sheets for each quarter that ends at least 30 days before submission of the application, unless it is included in the most recent annual financial statement.

(2) An estimate of construction costs, including:

(i) A phase-by-phase breakdown of costs;

(ii) The estimated completion dates for each phase; and

(iii) A detailed estimate of the cost of removing all of the marine components of the deepwater port, other than pipelines that lie beneath the seabed, when operations at the port cease.

(3) Annualized projections or estimates of each of the following, along with the underlying assumptions, for the next 5 years and at reasonable intervals throughout the life of the deepwater port:

(i) Total oil or natural gas throughput and subtotals showing throughput owned by the applicant and its affiliates and throughput owned by others;

(ii) Projected financial statements, including a balance sheet and income statement; and

(iii) Annual operating expenses, showing separately any payment made to an affiliate for any management duties carried out in connection with the operation of the deepwater port.

(4) A copy of all proposals or agreements concerning the management and financing of the deepwater port, including agreements relating to throughputs, capital contributions, loans, guarantees, commitments, charters, and leases.

(5) The throughput reports for the calendar year preceding the date of the

application for the applicant and each of the applicant's affiliates engaged in producing, refining, or marketing oil or natural gas, along with a copy of each existing or proposed throughput agreement. Each throughput report must list the throughput of the following products:

(i) Crude oil. If crude oil is the only product the port is designed to transport, the throughput report may be limited to reporting crude oil;

(ii) Gasoline;

(iii) Jet aviation fuel;

(iv) Distillate fuel oils;

(v) Other refinery products; and

(vi) Natural gas.

(h) *Construction contracts and construction-related studies.*

(1) A copy of each contract that the applicant made for the construction of any component of the deepwater port or for the operation of the port.

(2) A listing and abstract of:

(i) All completed or ongoing studies on deepwater ports conducted by or for the applicant; and

(ii) All other construction-related studies used by the applicant.

(3) The identity of each contractor, if known, that will construct or install the deepwater port or a portion of the port, including each firm's:

(i) Name;

(ii) Address;

(iii) Citizenship;

(iv) Telephone number; and

(v) Qualifications.

(i) *Compliance with Federal water pollution requirements.* (1) Evidence, to the extent available, that the requirements of section 401(a)(1) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a)(1), will be satisfied. If complete information is not available by the time MARAD must either approve or deny the application under 33 U.S.C. 1504(i)(1), the license for the deepwater port is conditioned upon the applicant demonstrating that the requirements of section 401(a)(1) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a)(1), will be satisfied.

(2) In those cases where certification under 33 U.S.C. 1341(a)(1) must be obtained from the Administrator of the Environmental Protection Agency, the request for certification, and pertinent information (*e.g.*, plume modeling) related to the certification.

(j) *Coastal zone management.* A request for each certification required by section 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456).

(k) *Identification of lease block.* (1) Identification of each lease block where any part of the proposed deepwater port or its approaches is located. This identification must be made on Official Outer Continental Shelf Leasing Maps or Protraction diagrams, where they are available. For each lease block, provide the following:

(i) A description of each pipeline, or other right-of-way crossing, in enough detail to allow plotting of the rights-of-way to the nearest one-tenth of a second in latitude and longitude; and

(ii) The identity of the lessee of each pipeline or other right-of-way.

(2) Detailed information concerning any interest that anyone, including the applicant, has in each block.

(3) Detailed information concerning the present and planned use of each block.

(l) *Overall site plan.* Single-line drawings showing the location and type of each component of the proposed deepwater port and its necessary facilities, including:

(1) Floating structures;

(2) Fixed structures;

(3) Aids to navigation;

(4) Manifold systems; and

(5) Onshore storage areas, pipelines, and refineries.

(m) *Site plan for marine components.* A site plan consisting of the following:

(1) The proposed size and location of all:

(i) Fixed and floating structures and associated components seaward of the high water mark only, if the proposal does not involve a connected action (*i.e.*, installation of new pipeline extending in shore of the state boundary line);

(ii) Recommended ships' routing measures and proposed vessel traffic patterns in the port area, including aids to navigation;

(iii) Recommended anchorage areas and, for support vessels, mooring areas; and

(2) A reconnaissance hydrographic survey of the proposed marine site. This survey should provide data on the water depth, prevailing currents, cultural resources, and a general characterization of the sea bottom. A requirement to submit an engineering hydrographic survey of the final marine site will be imposed as a condition in the license. The latter survey will require more extensive analysis of the soil and detailed study to determine its physical composition (*i.e.*, minerals), and if the sea bottom can support fixed components comprising a deepwater port. The applicant may submit existing data, gathered within the previous 2 years, but it must be supplemented by field data for the specific locations in which a high degree of variability exists.

(n) *Soil data.* An analysis of the general character and condition of the ocean bottom, sub-bottom, and upland soils throughout the marine site. The applicant may use existing data, so long as it was collected within the last 2 years and continues to provide accurate information about conditions throughout the site. If not, a new survey must be completed to provide supplemental data. The analysis must include an opinion by a registered professional engineer specializing in soil mechanics concerning:

(1) The suitability of the soil to accommodate the anticipated design load of each marine component that will be fixed to or supported on the ocean floor; and

(2) The stability of the seabed when exposed to the environmental forces resulting from severe storms or lesser forces that occur over time, including any history of accretion or erosion of the coastline near the marine site.

(o) *Archeological information.* An analysis of the information from the reconnaissance hydrographic survey by a qualified underwater archeologist to determine the historical or other significance of the area where the site evaluation and pre-construction testing activities were conducted. This analysis must meet standards established by the Mineral Management Service for activities on the Outer Continental Shelf and include the areas potentially affected by the deepwater port, other associated platforms, and its pipeline routes.

(p) *Vessel operational information.* Description of information, to be provided in the operations manual, pertaining to vessel operations, vessel characteristics and weather forecasting.

(q) *Information on floating components.* (1) A description and preliminary design drawing of each floating component, including the hoses, anchoring or securing structure, and navigation lights if the component is a mooring buoy.

(2) The design criteria, developed under part 149 of this chapter, to which each floating component will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of safety, fire-fighting, and pollution prevention equipment to be used on each floating component.

(6) A description of lighting to be used on floating hoses for night detection.

(r) *Information on fixed offshore components.* (1) A description and

preliminary design drawing for each fixed offshore component.

(2) The design criteria, developed under part 149 of this chapter, to which each fixed offshore component will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of the following equipment to be installed:

(i) Navigational lighting;

(ii) Safety equipment;

(iii) Lifesaving equipment;

(iv) Firefighting equipment;

(v) Pollution prevention equipment (response equipment will be outlined in the facility response plan); and

(vi) Waste treatment equipment.

(6) A description and preliminary design drawing of the following:

(i) The cargo pumping equipment;

(ii) The cargo piping system;

(iii) The control and instrumentation system; and

(iv) Any associated equipment, including oil or natural gas-throughput-measuring equipment, leak-detection equipment, emergency-shutdown equipment, and the alarm system.

(7) The personnel capacity of each deepwater port pumping platform complex.

(s) *Information on offshore pipelines.* (1) A description and preliminary design drawing of the marine pipeline, including:

(i) Size;

(ii) Throughput capacity;

(iii) Length;

(iv) Depth of cover; and

(v) Protective devices.

(2) The design criteria to which the marine pipeline will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of the metering system to be used to measure flow rate.

(6) Information concerning all submerged or buried pipelines that will be crossed by the offshore pipeline and how each crossing will be made.

(t) *Information on onshore components.* The information required by paragraphs (t)(1) through (t)(3) must be supplied to the extent known by the applicant.

(1) A description of the location, capacity, and ownership of all planned and existing onshore pipelines, storage facilities, refineries, petrochemical facilities, and transshipment facilities that will be served by the deepwater port. Crude oil or natural gas gathering lines and lines wholly within a deepwater port must be included in data on onshore components only if specifically required. Entry points and major connections between lines and with bulk purchasers must be included.

(2) A chart showing the location of all planned and existing facilities that will be served by the port, including:

(i) Onshore pipelines;

(ii) Storage facilities;

(iii) Refineries;

(iv) Petrochemical facilities; and

(v) Transshipment facilities.

(3) A copy of all proposals or agreements with existing and proposed refineries that will receive oil transported through the deepwater port, the location and capacity of each such refinery and the anticipated volume of such oil to be refined by each such refinery to the extent known by the applicant.

(u) *Information on miscellaneous components.* (1) A description of each radio station or other communications facility to be used during construction and operation of the deepwater port and their proposed concept of operation.

(2) A description of the radar navigation system to be used in operation of the deepwater port outlined in the operations manual.

(3) A description of the method to be used for bunkering vessels using the deepwater port.

(4) A brief description of the type, size, and number of vessels to be used in bunkering, mooring, and servicing the vessels using the deepwater port.

(5) A description and location of shore-based support facilities, if any, to be provided for vessels described in paragraph (u)(4) of this section; or that serve as offices or facilities in support of the deepwater port operations.

(6) A copy of the actual radio station license, or if not available, the application sent to the Federal Communications Commission.

(v) *Construction procedures.* A description of the method and procedures to be used in constructing each component of the deepwater port (*e.g.*, shore-side fabrication, assembly and support), including anticipated dates of completion for each specific component during each phase of construction.

(w) *Operations manual.* A draft of the operations manual for the proposed port containing the information under § 150.15 of this chapter must demonstrate the applicant's ability to operate the port safely and effectively. To the extent circumstances are similar, this demonstration can be in the form of evidence, appended to the draft operations manual, of the applicant's participation in the safe and effective management or operation of other offshore facilities (for example, evidence of compliance with Mineral Management Service requirements for those facilities). If the information required for the manual is not available, state why it is not and when it will be available.

(x) *Environmental evaluation.* An analysis, sufficient to meet the requirements of the National Environmental Policy Act, and as outlined in subpart G of this part, of the potential for impacts on the natural and human environments, including sufficient information to comply with all applicable Federal, tribal, and state requirements for the protection of the environment.

(y) *Aids to navigation.* (1) For each proposed aid to navigation, the proposed position of the aid described by latitude and longitude coordinates to the nearest second or tenth of a second as determined from the largest scale chart of the area in which the aid is to be located. Specify latitude and longitude to a level obtained by visual interpolation between the finest graduation of the latitude and longitude scales on the chart.

(2) For each proposed obstruction light and rotating lighted beacon:

(i) Color;

(ii) Characteristic;

(iii) Effective intensity;

(iv) Height above water; and

(v) General description of illumination apparatus.

(3) For each proposed sound signal on a structure, a general description of the apparatus.

(4) For each proposed buoy:

(i) Shape;

(ii) Color;

(iii) Number or letter;

(iv) Depth of water in which located; and

(v) General description of any light or sound signal apparatus on the buoy.

(5) For the proposed radar beacon (RACON), height above water and a general description of the apparatus.

(z) *National Pollutant Discharge Elimination System (NPDES).* To the extent available, the information prescribed by, and submitted on, the NPDES Application for Permit to Discharge, Short Form D, for applying for a discharge permit from the Environmental Protection Agency (EPA). If complete information is not available by the time MARAD must either approve or deny the application for a designated application area under 33 U.S.C. 1504(i)(1), the license for the deepwater port is conditioned upon the applicant receiving the required discharge permit from the EPA before

the start of any discharge requiring such a permit. The issuance of the permit demonstrates that all potential water discharges have been satisfactorily analyzed and water quality control measures implemented to mitigate discharges to meet NPDES.

(aa) *Placement of structures and the discharge of dredged or fill material.* The information required to obtain a Department of Army permit for placement of structures and the discharge of dredged or fill material.

(bb) *Additional Federal authorizations.* All other applications for Federal authorizations not listed elsewhere in this subpart that are required for ownership, construction, and operation of a deepwater port.

(cc) *A statement that the information in the application is true.* This statement must be placed at the end of the application, sworn to before a notary public, and signed by a responsible official of the applicant.

§ 148.107 What additional information may be required?

(a) The Commandant (G–M), in coordination with MARAD, may require the applicant or the applicant's affiliates to file, as a supplement to the application, any analysis, explanation, or detailing of information in the application or any other information the Commandant (G–M) deems necessary.

(b) The Commandant (G–M) may require the applicant or the applicant's affiliates to make available for Coast Guard examination, under oath or for interview, persons having, or believed to have, necessary information.

(c) The Commandant (G–M) may set a deadline for receiving the information. If the applicant states that the required information is not yet available but will be at a later date, the Commandant (G–M) may specify a later deadline. If a requirement is not met by a deadline fixed under this paragraph, the Commandant (G–M), in coordination with MARAD, may determine whether compliance with the requirement is important to processing the application within the time prescribed by the Act. If the requirement is important to processing the application within the time limit set by the Act, the Commandant (G–M) may recommend to the Administrator of the Maritime Administration that the Administrator either not approve the application or suspend it indefinitely. The deadline for the Administrator's review under the Act is extended for a period of time equal to the time of the suspension.

§ 148.108 What if a Federal or State agency or other interested party requests additional information?

(a) Any Federal or State agency or other interested person may recommend that the applicant provide information in addition to that required to be in the application.

(b) Recommendations must include a brief statement of why the information is needed.

(c) The Commandant (G–M) must receive the request within 30 days after publication of the notice of application in the **Federal Register**. The request is considered before any final determination is made.

(d) Commandant (G–M) will consider whether:

(1) The information requested is essential for processing the license application; and

(2) The time and effort required by the applicant in gathering the information will result in an undue delay in the application process.

(e) Commandant (G–M) may consult with the applicant prior to issuing a determination on the request for additional information.

§ 148.110 How do I prepare my application?

(a) Any person may confer with the Commandant (G–M) concerning requirements contained in this rule for the preparation of an application or the requirements of this subchapter.

(b) The applicant may incorporate, by clear and specific reference in the application, the following:

(1) Standard reference material that the applicant relied on and that is readily available to Federal and State agencies;

(2) Current information contained in previous applications or reports that the applicant has submitted to the application staff; or

(3) Current information contained in a tariff, report, or other document previously filed for public record with the Surface Transportation Board or the Securities and Exchange Commission, if:

(i) A certified true and complete copy of the document is attached to each copy of the application required by § 148.115(a);

(ii) The date of filing and the document number or other locator are on the cover of the document; and

(iii) Any verification or certification required for the original filing (other than from auditors or other independent persons) is dated no earlier than 30 days before the date of the application.

§ 148.115 How many copies of the application must I send and where must I send them?

Send copies of the application as described in paragraphs (a) through (c).

(a) Six printed copies (and an electronic version), to the Commandant (G–MSO), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

(b) One copy to the U.S. Army Corps of Engineers District Office having jurisdiction over the proposed port. For the address, *see http://www.usace.army.mil/.*

(c) The Commandant (G–MSO) may require the applicant to supply additional printed copies for distribution to Federal, tribal, and state regulatory agencies involved in reviewing the application.

§ 148.125 What are the application fees?

(a) The applicant must submit to the Commandant (G–M) a nonrefundable application fee of $350,000 with each application for a license. If additional information is necessary to make an application complete, no additional application fee is required.

(b) The costs incurred by the Federal Government in processing an application will be charged to the application fee until it is exhausted. If the fee is exhausted and the Federal Government incurs further processing costs, the applicant will be charged the additional costs. Commandant (G–M) will periodically advise the applicant of the status of expenses incurred during the application process.

(c) Additional costs attributable to efforts to process a deepwater port license application will be paid by the applicant. These additional costs must be submitted to the Commandant (G–M) when they are assessed.

(d) Application fees and additional costs assessed under this section must be made payable to the ''United States Treasury.''

Subpart C—Processing Applications

General

§ 148.200 What is the purpose of this subpart?

This subpart prescribes the requirements for processing an application for a deepwater port license. It includes the procedures for maintaining the docket, designating adjacent coastal States, holding informal and formal public hearings, and approving or denying an application.

§ 148.205 How are documents related to the application maintained?

(a) The Commandant (G–M) maintains the docket for each application.

(b) The docket contains a copy of all documents filed or issued as part of the application process.

(c) Recommendations submitted by Federal departments and agencies under 33 U.S.C. 1504(e)(2) are docketed when they are received. Copies of applicable NEPA documents prepared under 33 U.S.C. 1504(f) are docketed when they are sent to the Environmental Protection Agency.

(d) For a document designated as protected from disclosure under 33 U.S.C. 1513(b), the Commandant (G–M):

(1) Prevents the information in the document from being disclosed, unless the Commandant (G–M) states that the disclosure is not inconsistent with 33 U.S.C. 1513(b); and

(2) Keeps a record of all individuals who have a copy of the document.

§ 148.207 How and where can I view docketed documents?

(a) All material in a docket under § 148.205 is available to the public for inspection and copying at Commandant (G–M) at the address under ''Commandant (G–M)'' in § 148.5, except for:

(1) Contracts under 33 U.S.C. 1504(c)(2)(B) for the construction or operation of a deepwater port; and

(2) Material designated under paragraph (b) of this section as a trade secret or commercial or financial information that is claimed to be privileged or confidential.

(b) A person submitting material that contains either a trade secret or commercial or financial information under paragraph (a)(2) of this section must designate those portions of the material that are privileged or confidential. Section 148.221 contains procedures for objecting to these claims.

§ 148.209 How is the application processed?

The Commandant (G–M) processes each application and publishes the notice of application under 33 U.S.C. 1504(c) in the **Federal Register**. Upon publication of a notice of application, the Commandant (G–M) delivers copies of the application to:

(a) Each Federal agency with jurisdiction over any aspect of ownership, construction, or operation of deepwater ports. These include the Environmental Protection Agency, the Departments of Commerce, Defense, Energy, Interior and State, and relevant State environmental and natural resources protection agencies.

(b) Each adjacent coastal State.

§ 148.211 What must I do if I need to change my application?

If at any time before the Secretary approves or denies an application, the information in it changes or becomes incomplete, the applicant must promptly submit the changes or additional information in the manner set forth in 148.115 of this part.

§ 148.213 How do I withdraw my application?

The applicant may withdraw an application at any time before the proceeding is terminated by delivering or mailing notice of withdrawal to the Commandant (G–M) for docketing.

§ 148.215 What if a port has plans for a deep draft channel and harbor?

If a port of a State that will be directly connected by pipeline with a proposed deepwater port has existing plans for a deep draft channel and harbor, a representative of the port may request a determination under 33 U.S.C. 1503(d). The request must be sent, in writing, to Commandant (G–M) within 30 days after the date that the notice of application for the deepwater port is published in the **Federal Register**. The request must contain the information required in paragraphs (a) through (e) of this section.

(a) Signature of the highest official of the port submitting the request;

(b) A copy of the existing plans for the construction of a deep draft channel and harbor;

(c) Certification that the port has an active study by the Secretary of the Army for the construction of a deep draft channel and harbor or that the port has pending an application for a permit under 33 U.S.C. 403 for the construction;

(d) Any available documentation on:

(1) Initial costs (by phases, if development is staged) for the proposed onshore project, including dredging, ship terminal, and attendant facilities;

(2) Estimated annual operating expenses (by phases, if development is staged), including labor, for 30 years for all elements of the project;

(3) Estimated time of completion of all elements of the project;

(4) Estimated volume of ship traffic and volume and variety of the tonnage;

(5) Potential traffic congestion conditions in the port and the port's capability to control vessel traffic as a result of the proposed dredging project;

(6) Estimated economic benefits of the project, including:

(i) Economic contribution to the local and regional area;

(ii) Induced industrial development;

(iii) Increased employment; and

(iv) Increases in tax revenues;

(7) Environmental and social impact of the project on elements of the local and regional community; and

(8) An estimate of the economic impact that granting a deepwater port license will have on the proposed project.

(e) A statement whether the port seeks a determination that the port best serves the national interest.

§ 148.217 How can a State be designated as an adjacent coastal State?

(a) Adjacent coastal States are named in the notice of application published in the **Federal Register**. However, a State not named as an adjacent coastal State in the notice may request to be designated as one if the environmental risks to it are equal to or greater than the risks posed to a State directly connected by pipeline to the proposed deepwater port.

(b) The request must:

(1) Be submitted in writing to the Commandant (G–M) within 14 days after the date of publication of the notice of application in the **Federal Register**;

(2) Be signed by the Governor of the State;

(3) List the facts and any available documentation or analyses concerning the risk of damage to the coastal environment of the State; and

(4) State why the State believes the risk of damage to its coastal environment is equal to or greater than the risk to a State connected by a pipeline to the proposed deepwater port.

(c) Upon receipt of a request, the Commandant (G–M) sends a copy of the State's request to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and asks for the Administrator's recommendations within an amount of time that will allow the Commandant (G–M) 45 days from receipt of the request to determine the matter.

(d) If after receiving NOAA's recommendations, the Commandant (G–M) determines that the State should be considered as an adjacent coastal State, the Commandant (G–M) designates it as an adjacent coastal State. If the Commandant (G–M) denies the request, the Commandant (G–M) notifies the Governor of the requesting State of the denial.

§ 148.221 What must I do to make a claim or object to a claim?

(a) Persons required to furnish information under this part may assert a claim of privilege or immunity as grounds for relief from the requirement.

The claim must be submitted in writing to the Commandant (G–M).

(b) If the claim concerns a document protected from disclosure under 33 U.S.C. 1513(b), the document must be placed in a sealed envelope with the name of the person claiming the protection, the applicant's name, the date or anticipated date of the application, and a brief statement of the basis of the claim. If a number of documents are involved, they must be grouped according to the nature of the claim and both the documents and their envelopes must be numbered using a self-explanatory numbering system.

(c) If the claim concerns the attorney-client privilege, the claim must identify the communication by date, type, persons making and receiving it, and general subject matter. If the required information is in a separable part of a communication, such as an attachment to a letter, the separate part must be identified the same way as the communication. The identification must be filed with the Commandant (G–M).

(d) A Federal or State agency, the applicant, an affiliate of the applicant, or other interested person may object to a claim. The objection must be in writing, must include a brief statement of the basis for the objection, and must identify the document to which the claim applies.

(e) Commandant (G–M) determines issues raised by claims filed under this section and may specify procedures to be used to resolve the issues. Any person may submit recommendations to the Commandant (G–M) as to the procedures to be used.

(f) The presiding officer at any formal or informal hearing may allow claims or objections that could be filed under this section to be made and may issue a decision or refer the matter to the Commandant (G–M).

(g) The filing of a claim under this section, other than a claim under paragraph (b) of this section, stays the time for meeting any deadline for submitting information related to an issue raised in a claim or objection. However, the filing of a claim does not stay the periods for processing and reviewing applications, unless the Commandant (G–M) determines that compliance with the requirement is material to the processing of the application within the required time. If the Commandant (G–M) determines that the information is material, the Commandant (G–M) may suspend the processing of the application. The period of suspension is not counted toward the time limits in 33 U.S.C. 1503(c)(6), 1504(d)(3), (e)(2), and (g), and 1508(b)(1).

Public Meetings

§ 148.222 When must public meetings be held?

(a) Before a license is issued, at least one public meeting under 33 U.S.C. 1504(g) must be held in each adjacent coastal State.

(b) The Commandant (G–M), in coordination with the Administrator of the Maritime Administration, shall publish a notice of public meetings in the **Federal Register** and mails or delivers a copy of the notice to the applicant, to each adjacent coastal State, and to all who request a copy.

(c) Anyone may attend the public meeting(s) and provide oral or written information. The presiding officer may limit the time for providing oral information.

§ 148.227 How is a public meeting reported?

(a) After completion of a meeting, the presiding officer forwards a report on the hearing to the Commandant (G–M) for docketing.

(b) The report contains at least:

(1) An overview of the factual issues addressed;

(2) A transcript or recording of the meeting; and

(3) A copy of all material submitted to the presiding officer.

(c) During the hearing, the presiding officer announces the information that the report must contain.

Formal Hearings

§ 148.228 What if a formal evidentiary hearing is necessary?

(a) After all public meetings under 148.222 are concluded, the Commandant (G–MSO), in coordination with the Administrator of the Maritime Administration, considers whether there are one or more specific and material factual issues that may be resolved by a formal evidentiary hearing.

(b) If the Commandant (G–M), in coordination with the Administrator of the Maritime Administration, determines that one or more issues under paragraph (a) of this section exist, the Coast Guard will hold at least one formal evidentiary hearing under 5 U.S.C. 554 in the District of Columbia.

(c) The Commandant (G–MSO) files a request for assignment of an administrative law judge (ALJ) with the ALJ Docketing Center. The Chief Administrative Law Judge designates an ALJ or other person to conduct the hearing.

(d) The recommended findings and the record developed in a hearing under paragraph (b) of this section are considered by the Administrator of the Maritime Administration in deciding whether to approve or deny a license.

§ 148.230 How is notice of a formal hearing given?

(a) The Commandant (G–M) publishes a notice of the hearing in the **Federal Register** and sends a notice of the hearing to the applicant, to each adjacent coastal State, and to each person who requests such a notice.

(b) The notice of the hearing includes the applicant's name, the name of the ALJ assigned to conduct the hearing, a list of the factual issues to be resolved, the address of the place where documents are to be filed, and the address where a copy of the rules of practice, procedure, and evidence to be used at the hearing is available.

§ 148.232 What are the rules for a formal hearing?

(a) The Commandant (G–M) determines the rules for each formal hearing. Unless otherwise specified in this part, the Commandant (G–M) applies the rules of practice, procedure, and evidence in part 20 of this chapter.

(b) The Commandant (G–M) sends a written copy of the procedure to the applicant, each person intervening in the proceedings, and each person who requests a copy.

§ 148.234 What are the limits of an administrative law judge's jurisdiction?

(a) An ALJ's jurisdiction begins upon assignment to a proceeding.

(b) An ALJ's jurisdiction ends after the recommended findings are filed with the Commandant (G–M) or immediately after the ALJ issues a notice of withdrawal from the proceeding.

§ 148.236 What authority does an administrative law judge have?

When assigned to a formal hearing, an ALJ may:

(a) Administer oaths and affirmations;

(b) Issue subpoenas;

(c) Issue rules of procedure for written evidence;

(d) Rule on offers of proof and receive evidence;

(e) Examine witnesses;

(f) Rule on motions of the parties;

(g) Suspend or bar an attorney from representing a person in the proceeding for unsuitable conduct;

(h) Exclude any person for disruptive behavior during the hearing;

(i) Set the hearing schedule;

(j) Certify questions to the Commandant (G–M);

(k) Proceed with a scheduled session of the hearing in the absence of a party who has failed to appear;

(l) Extend or shorten a non-statutorily imposed deadline under this subpart

within the 240 day time limit for the completion of public hearings in 33 U.S.C. 1504(g);

(m) Set deadlines not specified in this subpart or the Act; and

(n) Take any other action authorized by or consistent with this subpart, the Act, or 5 U.S.C. 551–559.

§ 148.238 Who are the parties to a formal hearing?

The parties to a formal hearing are:

(a) The applicant;

(b) The Commandant (G–M); and

(c) Any person intervening in the proceedings.

§ 148.240 How does a State or a person intervene in a formal hearing?

(a) Any person or adjacent coastal State may intervene in a formal hearing.

(b) A person must file a petition of intervention within 10 days after notice of the formal hearing is issued. The petition must:

(1) Be addressed to the ALJ Docketing Center;

(2) Identify the issues and the petitioner's interest in those issues; and

(3) Designate the name and address of a person who can be served if the petition is granted.

(c) An adjacent coastal State need only file a notice of intervention with the ALJ Docketing Center.

(d) The ALJ has the authority to limit the scope and period of intervention during the proceeding.

(e) If the ALJ denies a petition of intervention, the petitioner may file a notice of appeal with the ALJ Docketing Center within 7 days of the denial. A brief may be submitted with the notice of appeal. Parties who wish to file a brief in support of or against the notice of appeal may do so within 7 days of the filing of the notice.

(f) The Commandant (G–M) will rule on the appeal. The ALJ does not have to delay the proceedings for intervention appeals.

§ 148.242 How does a person who is not a party to a formal hearing present evidence at the hearing?

(a) For a person who is not a party to a formal hearing to present evidence at the hearing, the person must send a petition to present evidence to the ALJ Docketing Center before the beginning of the formal hearing. The petition must describe the evidence that the person will present and show its relevance to the issues listed in the notice of formal hearing.

(b) If a petition is granted, the ruling will specify which evidence is approved to be presented at the hearing.

§ 148.244 Who must represent the parties at a formal hearing?

(a) All organizations that are parties to the proceeding must be represented by an attorney. Individuals may represent themselves.

(b) Any attorney representing a party to the proceeding must file a notice of appearance according to § 20.301(b) of this chapter.

(c) Each attorney must be in good standing and licensed to practice before a court of the United States or the highest court of any State, territory, or possession of the United States.

§ 148.246 When is a document considered filed and where must it be filed?

(a) If a document to be filed is submitted by mail, it is considered filed on the date it is postmarked. If a document is submitted by hand delivery or electronically, it is considered filed on the date received by the clerk.

(b) File all documents and other materials related to an administrative proceeding at the U.S. Coast Guard Administrative Law Center, Attention: Hearing Docket Clerk, room 412, 40 South Gay Street, Baltimore, MD, 21201–4022.

§ 148.248 What happens when a document does not contain all necessary information?

Any document that does not satisfy the requirements in §§20.303 and 20.304 of this chapter will be returned to the person who submitted it with a statement of the reasons for denial.

§ 148.250 Who must be served before a document is filed?

Before a document may be filed by any party, it first must be served upon:

(a) All other parties; and

(b) The Commandant (G–M).

§ 148.252 What is the procedure for having a subpoena served?

(a) A party may submit a request for a subpoena to the ALJ. The request must show the relevance and scope of the evidence sought.

(b) Requests should be submitted sufficiently in advance of the hearing so that exhibits and witnesses can be included in the lists required by § 20.601 of this chapter but may be submitted later before the end of the hearing if good cause is shown for the late submission.

(c) A request for a subpoena must be submitted to the ALJ.

(d) A proposed subpoena, such as the form in *http://cgweb.comdt.uscg.mil/g-cj/subpoena.doc,* must be submitted with the request. If you do not use this form, the proposed subpoena must contain:

(1) The docket number of the proceedings;

(2) The captions ''Department of Homeland Security,'' ''Coast Guard,'' and ''Licensing of deepwater port for coastal waters off (insert name of the coastal State closest to the proposed deepwater port and the docket number of the proceeding)'';

(3) The name and the address of the office of the ALJ;

(4) For a subpoena to give testimony, a statement commanding the person to whom the subpoena is directed to attend the formal hearing and give testimony;

(5) For a subpoena to produce documentary evidence, a statement commanding the person to produce designated documents, books, papers, or other tangible things at a designated time or place; and

(6) An explanation of the procedure in § 20.309(d) of this chapter and paragraph (h) of this section for quashing a subpoena.

(e) The procedure for serving a subpoena must follow rule 45 of the Federal Rules of Civil Procedure, unless the ALJ authorizes another procedure.

(f) The witness fees for a subpoenaed witness are the same as the fees for witnesses subpoenaed in U.S. District Courts. The person requesting the subpoena must pay these fees.

(g) When serving a subpoena, a party must include witness fees in the form of a check to the individual or organization for one day plus mileage or, in the case of a government-issued subpoena, a form SF–1157 for reimbursement for witness fees and mileage.

(h) Any person served with a subpoena has 10 days from the time of service to move to quash the subpoena.

(i) If a person does not comply with a subpoena, the ALJ decides whether judicial enforcement of the subpoena is necessary. If the ALJ decides it is, the Commandant (G–M) reviews this decision.

§ 148.254 How is a transcript of the hearing prepared?

(a) Under the supervision of the ALJ, the reporter prepares a verbatim transcript of the hearing. Nothing may be deleted from the transcript, unless ordered by the ALJ and noted in the transcript.

(b) After a formal hearing is completed, the ALJ certifies and forwards the record, including the transcript, to the clerk to be placed into the docket.

(c) At any time within the 20 days after the record is docketed, the ALJ may make corrections to the certified transcript. When corrections are filed, they are attached as appendices.

(d) Any motion to correct the record must be submitted within 10 days after the record is docketed.

§ 148.256 What happens at the conclusion of a formal hearing?

After closing the record of a formal hearing, the ALJ prepares a recommended finding on the issues that were the subject of the hearing. The ALJ submits that finding to the Commandant (G–M).

Approval or Denial of the Application

§ 148.276 When must the application be approved or denied?

(a) In 33 U.S.C. 1504, the Deepwater Port Act provides strict timelines for action on a license application, which if closely observed can lead to action in just under 1 year. The Coast Guard can recommend that MARAD suspend the process if an applicant fails to provide timely information or requests additional time to comply with a request.

(b) The Coast Guard must conduct public hearings in each adjacent Coastal State within 240 days of publication of the notice of receipt of a deepwater port application.

(c) An application must be approved or denied within 90 days after the close of the public hearing period specified in paragraph (b) of this section.

§ 148.277 How may Federal agencies and States participate in the application process?

(a) Under § 148.209, Federal agencies and adjacent coastal States are sent copies of the application. The agencies and States are encouraged to begin submitting their comments at that time.

(b) To be considered, comments from Federal agencies and adjacent coastal States must be received by the Commandant (G–M) within 45 days after the close of the public hearing period specified in § 148.276(b). Separate comment periods will apply to the review of documents created during the NEPA process. Both Commandant (G–M) and MARAD review the comments received.

(c) Comments should identify problems, if any, and suggest possible solutions.

§ 148.279 What are the criteria for approval or denial of an application?

The criteria for approving or denying a license application appear in 33 U.S.C. 1503.

§ 148.281 What happens when more than one application is submitted for an oil deepwater port for the same application area?

(a) When more than one application is submitted for an oil deepwater port for the same application area under 33 U.S.C. 1504(d), only one application is approved. Except as provided in paragraph (b) of this section, applicants receive priority in the following order:

(1) An adjacent coastal State (or combination of States), political subdivision of the State, or an agency or instrumentality, including a wholly owned corporation of the State;

(2) A person that is:

(i) Not engaged in producing, refining, or marketing oil;

(ii) Not an affiliate of a person engaged in producing, refining, or marketing oil; or

(iii) Not an affiliate of an affiliate of a person engaged in producing, refining, or marketing oil; and then

(3) Any other applicant.

(b) MARAD may also approve one of the proposed deepwater ports if it determines that that port will best serve the national interest. In making this determination, MARAD considers:

(1) The degree to which each deepwater port will affect the environment, as determined under the review criteria in subpart G to this part;

(2) The differences between the anticipated completion dates of the deepwater ports; and

(3) The differences in costs for construction and operation of the ports that would be passed on to consumers of oil.

(c) This section does not apply to applications for natural gas deepwater ports.

§ 148.283 When is the application process stopped before the application is approved or denied?

The Commandant (G–M) recommends to MARAD that the application process be suspended before the application is approved or denied if:

(a) All applications are withdrawn before MARAD approves one of them; or

(b) There is only one application; it is incomplete, and the applicant does not respond to a request by the Commandant (G–M) for further information, as per § 148.107.

Subpart D—Licenses

§ 148.300 What does this subpart concern?

This subpart concerns the license for a deepwater port and the procedures for transferring, amending, suspending, reinstating, revoking, and enforcing a license.

§ 148.305 What is included in a deepwater port license?

A deepwater port license contains information about the licensee and the port, and conditions of operation that are set by MARAD. Licenses are issued in conformance with the Deepwater Ports Act of 1974, as amended, and with rules and policies of MARAD that implement that Act.

§ 148.307 Who may consult with the Commandant (G–M) on developing the conditions of a license?

Federal agencies, the adjacent coastal States, and the owner of the deepwater port may consult with the Commandant (G–M) on the conditions of the license being developed under 33 U.S.C. 1503(e).

§ 148.310 How long does a license last?

Each license remains in effect indefinitely unless:

(a) It is suspended or revoked by MARAD; or

(b) It is surrendered by the owner.

§ 148.315 How is a license amended, transferred, or reinstated?

(a) MARAD may amend, transfer, or reinstate a license if it finds that the amendment, transfer, or reinstatement is consistent with the requirements of the Act and this subchapter.

(b) The owner must submit a request for an amendment, transfer, or reinstatement to the Commandant (G–M).

§ 148.320 How is a license enforced, suspended, or revoked?

MARAD may enforce, suspend, or revoke a license under 33 U.S.C. 1507(c).

Subpart E—Site Evaluation and Pre-Construction Testing

§ 148.400 What does this subpart do?

(a) This subpart prescribes requirements under 33 U.S.C. 1504(b) for the activities that are involved in site evaluation and pre-construction testing at potential locations for deepwater ports and that may:

(1) Adversely affect the environment;

(2) Interfere with authorized uses of the Outer Continental Shelf; or

(3) Pose a threat to human health and welfare.

(b) For the purpose of this subpart, ''site evaluation and pre-construction testing'' means studies performed at potential deepwater port locations, including:

(1) Preliminary studies to determine the feasibility of a site;

(2) Detailed studies of the topographic and geologic structure of the ocean

bottom to determine its ability to support offshore structures and other equipment; and

(3) Studies done for the preparation of the environmental analysis required under § 148.105.

§ 148.405 What are the procedures for notifying the Commandant (G–M) of proposed site evaluation and pre-construction testing?

(a) Any person who wants to conduct site evaluation and pre-construction testing at a potential site for a deepwater port must submit a written notice to the Commandant (G–M) at least 30 days before the beginning of the evaluation or testing. The Commandant (G–M) advises and coordinates with appropriate Federal agencies and the States concerning activities covered by this subpart.

(b) The written notice must include the following:

(1) The names of all parties participating in the site evaluation and pre-construction testing;

(2) The type of activities and the way they will be conducted;

(3) Charts showing where the activities will be conducted and the locations of all offshore structures, including pipelines and cables, in or near the proposed area;

(4) The specific purpose for the activities;

(5) The dates when the activities will begin and end;

(6) The available data on the environmental consequences of the activities;

(7) A preliminary report, based on existing data, of the historic and archeological significance of the area where the proposed activities are to take place. A report of each contact made with any appropriate State liaison officer for historic preservation must be included; and

(8) Additional information, if necessary, in individual cases.

(c) For the following activities, the notice need have only the information required in paragraphs (b)(1), (b)(2), and (b)(5) of this section, as well as a general indication of the proposed location and purpose of the activities:

(1) Gravity and magneto-metric measurements;

(2) Bottom and sub-bottom acoustic profiling without the use of explosives;

(3) Sediment sampling of a limited nature using either core or grab samplers, if geological profiles indicate no discontinuities that may have archeological significance;

(4) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species, or if the sampling is permitted by another Federal agency;

(5) Meteorological measurements, including the setting of instruments;

(6) Hydrographic and oceanographic measurements, including the setting of instruments; and

(7) Small diameter core sampling to determine foundation conditions.

(d) A separate written notice is required for each site.

§148.410 What are the conditions for conducting site evaluation and pre-construction testing?

(a) No persons may conduct site evaluation and pre-construction testing unless they comply with this subpart and other applicable laws.

(b) Measures must be taken to prevent or minimize the effect of activities under 148.400(a).

§148.415 When conducting site evaluation and pre-construction testing, what must be reported?

(a) When conducting site evaluation or pre-construction testing, the following must be immediately reported by any means to the Commandant (G–M):

(1) Any evidence of objects of cultural, historical, or archeological significance;

(2) Any adverse effect on the environment;

(3) Any interference with authorized uses of the Outer Continental Shelf;

(4) Any threat to human health and welfare; and

(5) Any adverse effect on an object of cultural, historical, or archeological significance.

(b) Within 120 days after the site evaluation or pre-construction testing, a final written report must be submitted to the Commandant (G–M) that contains:

(1) A narrative description of the activities performed;

(2) A chart, map, or plat of the area where the activities occurred;

(3) The dates that the activities were performed;

(4) Information on the adverse effects of items reported under paragraph (a) of this section;

(5) Data on the historical or archeological significance of the area where the activities were conducted, including a report by an underwater archeologist; and

(6) Any additional information required by the Commandant (G–M) on a case-by-case basis.

§148.420 When may the Commandant (G–M) suspend or prohibit site evaluation or pre-construction testing?

(a) The Commandant (G–M) may order, either in writing or orally with written confirmation, the prohibition or immediate suspension of any activity related to site evaluation or pre-construction testing, when the activity threatens harm to:

(1) Human life;

(2) Biota;

(3) Property;

(4) Cultural resources;

(5) Any valuable mineral deposits; or

(6) The environment.

(b) The Commandant (G–M) will consult with the applicant on measures to remove the cause for suspension.

(c) The Commandant (G–M) may lift a suspension after the applicant assures the Commandant (G–M) that the activity will no longer cause the threat on which the suspension was based.

Subpart F—Exemption From or Adjustments to Requirements in This Subchapter

§148.500 What does this subpart do?

This subpart provides procedures for requesting an exemption from a requirement in this subchapter. Commandant (G–M) and MARAD coordinate in evaluating requests for exemption from the requirements in this subchapter.

§148.505 How do I apply for an exemption?

(a) Any person required to comply with a requirement in this subchapter may submit a petition for exemption from that requirement.

(b) The petition must be submitted in writing to the Commandant (G–M).

(c) The Commandant (G–M) may require the petition to provide an alternative to the requirement.

§148.510 What happens when a petition for exemption involves the interests of an adjacent coastal State?

If the petition for exemption concerns an adjacent coastal State, the Commandant (G–M) forwards the petition to the Governor of the State for the Governor's recommendation.

§148.515 When is an exemption allowed?

The Commandant (G–M) may recommend that MARAD allow an exemption if he or she determines that:

(a) Compliance with the requirement would be contrary to public interest;

(b) Compliance with the requirement would not enhance safety or the health of the environment;

(c) Compliance with the requirement is not practical because of local conditions or because the materials or personnel needed for compliance are unavailable;

(d) National security or national economy justifies a departure from the rules; or

(e) The alternative, if any, proposed in the petition would:

(1) Ensure comparable or greater safety, protection of the environment, and quality of construction, maintenance, and operation of the deepwater port; and

(2) Be consistent with recognized principles of international law.

§ 148.600 What is the limit of financial liability?

The financial limit for liability for deepwater ports is set in accordance with section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704).

§ 148.605 How is the limit of liability determined?

(a) The Coast Guard may lower the $350,000,000 limit of liability for deepwater ports set by 33 U.S.C. 2704(a)(4), pursuant to paragraph (d) of that section.

(b) Requests to adjust the limit of liability for a deepwater port must be submitted to Commandant (G–M). Adjustments are established by a rulemaking that may take place concurrently with the processing of the deepwater port license application.

Subpart G—Environmental Review Criteria for Deepwater Ports

§ 148.700 How does the Deepwater Port Act interact with other Federal and State laws?

Nothing in this subpart supersedes any Federal, tribal, or State requirements for the protection of the environment. The applicant must prepare and submit applications to each respective agency that requires a permit or license to operate the port. A list of Federal and State agencies that require certification includes but is not limited to the Environmental Protection Agency (for clean air and clean water permits), the Research and Special Programs Administration (Office of Pipeline Safety) or the Mineral Management Service (or both) for pipeline approvals, and the appropriate state environmental agency.

§ 148.702 How were the environmental review criteria developed?

Under 33 U.S.C. 1505, the Commandant (G–M) must establish environmental review criteria for use in evaluating a proposed deepwater port. In developing these criteria, the Coast Guard considered the requirements for compliance with Federal and state mandates for the protection of the environment contained in, but not limited to, such guidance as published by:

(a) The Council on Environmental Quality (40 CFR parts 1500–1508);

(b) Department of Transportation (DOT) Order 5610.10C (Procedures for Considering Environmental Impacts); and

(c) U.S. Coast Guard Instruction M16475.1D (National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts).

§ 148.705 What is determined by the environmental evaluation?

(a) The environmental criteria to be used in evaluating a license application are established by general consensus of expertise, scientific opinion, public interest, and institutional requirements, such as laws and regulations established for the protection of the environment. Criteria that may be established in future environmental regulations or other requirements to protect the environment will also be used.

(b) The environmental criteria to be used in evaluating a license application are applied to all relevant aspects of:

(1) The fabrication, construction, operation, and decommissioning phases of a deepwater port;

(2) The operations of the vessels that serve the port;

(3) The port's servicing and support activities;

(4) Shore based construction and fabrication sites;

(5) Shore side supporting facilities (if appropriate) for the proposed location; and

(6) The No Action alternative and other reasonable alternatives.

(c) The criteria are also applied in a manner that takes into account the cumulative effects of other reasonably foreseeable actions as outlined in § 148.708.

§ 148.707 What type of criteria will be used in an environmental review and how will they be applied?

The license application will be reviewed for the deepwater port's effects on the environment and for the environment's effects on the port and any of its shore side support facilities. The environmental evaluation will be applied to the phases of construction, operation, and decommissioning of the proposed location and at least one alternative site. The evaluation will determine:

(a) The effect on the environment including but not limited to impacts on endangered species; essential fish habitat; marine sanctuaries; archaeological, cultural and historic sites; water; air; coastal zone management; coastal barrier resources; wetlands; and floodplains;

(b) The effect on oceanographic currents and wave patterns;

(c) The potential risks to a deepwater port from waves, winds, weather, and geological conditions and the steps that can be taken to protect against or minimize these dangers; and

(d) The effect on human health and welfare, including socioeconomic impacts, environmental justice and protection of children from environmental health and safety risks.

§ 148.708 Must the applicant's proposal reflect potential regulations?

Although a regulation is of no effect until it has been officially promulgated, to minimize the subsequent impact that potential regulations may have on a licensee, an applicant can and should reflect reasonably foreseeable environmental regulations in planning, operating, and decommissioning a deepwater port.

§ 148.709 How are these criteria reviewed and revised?

The Commandant (G–M) periodically reviews and may revise these criteria. Reviews and revisions are conducted in accordance with 148.700 of this subpart. The criteria established are consistent with the National Environmental Policy Act (42 U.S.C. 4321–4347).

§ 148.710 What environmental conditions must be satisfied?

(a) MARAD may issue a license to construct a deepwater port under the Act, with or without conditions, if certain specified conditions are met. The relevant environmental considerations include, but are not limited to the following:

(1) Construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency, environmental quality, and protection from the threat of terrorist attack and other subversive activity against persons and property on the port and the vessels and crews calling at the port; and

(2) Under the environmental review criteria in § 148.707 of this subpart, the applicant has demonstrated that the deepwater port will be fabricated, constructed, operated, and decommissioned using the best available technology to prevent or minimize adverse impact on the environment (33 U.S.C. 1503(c)(3) and 1504).

(b) Under 33 U.S.C. 1504(f), these criteria must be considered in the preparation of a single, detailed environmental impact statement or environmental assessment for all timely

applications covering a single application area. Additionally, 33 U.S.C. 1504(i)(3) specifies that, if more than one application is submitted for an ''application area'' (as defined in 33 U.S.C. 1504(d)(2)), the criteria must be used, among other factors, in determining whether any one proposed deepwater port clearly best serves the national interest.

§ 148.715 How is an environmental review conducted?

The environmental review of a proposed deepwater port and reasonable alternatives consists of Federal, tribal, state, and public review of the following two parts:

(a) An evaluation of the proposal's completeness of environmental information and quality of assessment, probable environmental impacts, and identification of procedures or technology that might prevent or minimize probable adverse environmental impacts; and

(b) An evaluation of the effort made under the proposal to prevent or minimize its probable environmental impacts. This evaluation will assess the applicant's consideration of the criteria in §§ 148.720 through 148.740 of this subpart.

§ 148.720 What are the siting criteria?

In accordance with § 148.715(b), the proposed and alternative sites for the deepwater port will be evaluated on the basis of how well each:

(a) Optimizes location to prevent or minimize detrimental environmental effects;

(b) Minimizes the space needed for safe and efficient operation;

(c) Locates offshore components in areas with stable sea-bottom characteristics;

(d) Locates onshore components where stable foundations can be developed;

(e) Minimizes the potential for interference with its safe operation from existing offshore structures and activities;

(f) Minimizes the danger posed to safe navigation by surrounding water depths and currents;

(g) Avoids extensive dredging or removal of natural obstacles such as reefs;

(h) Minimizes the danger to the port, its components, and tankers calling at the port from storms, earthquakes, or other natural hazards;

(i) Maximizes the permitted use of existing work areas, facilities, and access routes;

(j) Minimizes the environmental impact of temporary work areas, facilities, and access routes;

(k) Maximizes the distance between the port and its components and critical habitats including commercial and sport fisheries, threatened or endangered species habitats, wetlands, floodplains, coastal resources, marine management areas, and essential fish habitats;

(l) Minimizes the displacement of existing or potential mining, oil or gas production or transportation uses;

(m) Takes advantage of areas already allocated for similar use, without overusing such areas;

(n) Avoids permanent interference with natural processes or features that are important to natural currents and wave patterns; and

(o) Avoids dredging in areas where sediments contain high levels of heavy metals, biocides, oil or other pollutants or hazardous materials and in areas designated wetlands or other protected coastal resources.

§ 148.722 Should the construction plan incorporate best available technology and recommended industry practices?

Each applicant must submit a proposed construction plan. It must incorporate best available technology and recommended industry practices as directed in 148.730.

§ 148.725 What are the design, construction and operational criteria?

In accordance with 148.720(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Reflect the use of best available technology in design, construction procedures, operations, and decommissioning;

(b) Include safeguards, backup systems, procedures, and response plans to minimize the possibility and consequences of pollution incidents such as spills and discharges, while permitting safe operation with appropriate safety margins under maximum operating loads and the most adverse operating conditions;

(c) Provide for safe, legal, and environmentally sound waste disposal, resource recovery, affected area reclamation, and enhanced use of spoil and waste;

(d) Avoid permanent interference with natural processes or features that are important to natural currents and wave patterns;

(e) Avoid groundwater drawdown or saltwater intrusion, and minimizes mixing salt, fresh, and brackish waters;

(f) Avoid disrupting natural sheet flow, water flow, and drainage patterns or systems;

(g) Avoid interference with biotic populations, especially breeding habitats or migration routes;

(h) Maximize use of existing facilities;

(i) Provide personnel trained in oil spill prevention at critical locations identified in the accident analysis;

(j) Provide personnel trained in oil spill mitigation; and

(k) Plan for safe and effective removal of the deepwater port in the event of its decommissioning.

§ 148.730 What are the land use and coastal zone management criteria?

In accordance with § 148.715(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Accord with existing and planned land use, including management of the coastal region, for which purpose the proposal must be accompanied by a consistency determination from appropriate state agencies;

(b) Adhere to proposed local and State master plans;

(c) Minimize the need for special exceptions, zoning variances, or non-conforming uses;

(d) Plan floodplain uses in ways that will minimize wetlands loss, flood damage, the need for Federally-funded flood protection or flood relief, or any decrease in the public value of the floodplain as an environmental resource; and

(e) Avoid permanent alteration or harm to wetlands and take positive steps to minimize adverse effects on wetlands.

§ 148.735 What are other critical criteria that must be evaluated?

In accordance with § 148.715(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Avoid detrimental effects on human health and safety;

(b) Pose no compromise to national security;

(c) Account for the historic, archeological, and cultural significance of the area, including any potential requirements for historical preservation;

(d) Minimize harmful impacts to minorities and children; and

(e) Plan for serious consideration of the proposal that offers the least potential for environmental harm to the region or potential mitigation actions, when conflict exists between two or more proposed uses for a site.

§ 148.737 What environmental statutes must an applicant follow?

(a) In constructing and operating a deepwater port, the port must comply with all applicable Federal, State, and tribal environmental statutes. A list of the applicable Federal statutes includes but is not limited to: Abandoned

Shipwreck Act (ASA), 43 U.S.C. 2102, *et seq.;* American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996, *et seq.;* Antiquities Act, 16 U.S.C. 433, *et seq.;* Archeological and Historic Preservation Act (AHPA), 16 U.S.C. 469; Archeological Resources Protection Act (AHPA), 16 U.S.C. 470 aa-ll, *et seq.;* Architectural Barriers Act, 42 U.S.C. 4151, *et seq.;* Clean Air Act (CAA), Pub.L. 95–95, 42 U.S.C. 7401, *et seq.;* Clean Water Act of 1977 (CWA), Pub.L. 95–217, 33 U.S.C. 1251, *et seq.;* Coastal Barrier Resources Act (CBRA), Pub.L. 97–348, 16 U.S.C. 3510, *et seq.;* Coastal Zone Management Act (CZMA), Pub.L. 92–583, 16 U.S.C. 1451, *et seq.;* Community Environmental Response Facilitation Act (CERFA), 42 U.S.C. 9620, *et seq.;* Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also commonly referred to as SUPERFUND, Pub.L. 96–510, 26 U.S.C. 4611, *et seq.;* Consultation and Coordination With Indian Tribal Governments, E.O. 13175, 65 FR 67249; Coral Reef Protection, E.O. 13089, 63 FR 32701; Department of Transportation Act, Section 4(f), Pub.L. 89–670, 49 U.S.C. 303, Section 4(f), *et seq.;* Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001–11050, *et seq.;* Endangered Species Act of 1973 (ESA), Pub.L. 93–205, 16 U.S.C. 1531, *et seq.;* Energy Efficiency and Water Conservation at Federal Facilities, E.O. 12902, 59 FR 11463; Environmental Effects Abroad of Major Federal Agencies, E.O. 12114, 44 FR 1957; Environmental Quality Improvement Act, Pub.L. 98–581, 42 U.S.C. 4371, *et seq.;* Farmlands Protection Policy Act, Pub.L. 97–98, 7 U.S.C. 4201, *et seq.;* Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, E.O. 12898, 59 FR 7629; Federal Compliance with Pollution Control Standards, E.O. 12088, 43 FR 47707; Federal Insecticide, Fungicide, and Rodenticide Act, Pub.L. 86–139, 7 U.S.C. 135, *et seq.;* Federal Records Act (FRA), 44 U.S.C. 2101–3324, *et seq.;* Federalism, E.O. 13083, Fish and Wildlife Act of 1956, Pub.L. 85–888, 16 U.S.C. 742, *et seq.;* Fish and Wildlife Coordination Act, Pub.L. 85–624, 16 U.S.C. 661, *et seq.;* Fisheries Conservation and Recovery Act of 1976, Pub.L. 94–265, 16 U.S.C. 1801, *et seq.;* Flood Disaster Protection Act, 42 U.S.C. 4001, *et seq.;* Floodplain Management and Protection, E.O. 11988, 42 FR 26951; Greening the Government Through Leadership in Environmental Management, E.O. 13148, 65 FR 24595; Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, E.O. 13101, 63 FR 49643; Historic Sites Act, 16 U.S.C. 46, *et seq.;* Indian Sacred Sites, E.O. 13007, 61 FR 26771; Intergovernmental Review of Federal Programs, E.O. 12372, 47 FR 30959; Invasive Species, E.O. 13112, 64 FR 6183; Locating Federal Facilities on Historic Properties in our Nation's Central Cities, E.O. 13006, 61 FR 26071; Magnuson-Stevens Fishery Conservation and Management Act as amended through October 11, 1996, 16 U.S.C. 1801, *et seq.;* Marine Mammal Protection Act of 1972 (MMPA), Pub.L. 92–522, 16 U.S.C. 1361; Marine Protected Areas, E.O. 13158, 65 FR 24909; Marine Protection, Research, and Sanctuaries Act of 1972, Pub.L. 92–532, 16 U.S.C. 1431, *et seq.* and 33 U.S.C. 1401, *et seq.;* Migratory Bird Treaty Act, 16 U.S.C. 703–712, *et seq.;* National Environmental Policy Act of 1969 (NEPA), Pub.L. 91–190, 42 U.S.C. 4321, *et seq.;* National Historic Preservation Act of 1996 (NHPA), Pub.L. 89–665, 16 U.S.C. 470, *et seq.;* Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001, *et seq.;* Noise Control Act of 1972, Pub.L. 92–574, 42 U.S.C. 4901, *et seq.;* Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13101–13109, *et seq.;* Protection and Enhancement of Cultural Environmental Quality, E.O. 11593, 36 FR 8921; Protection and Enhancement of Environmental Quality, E.O. 11514, 35 FR 4247; Protection of Children from Environmental Health and Safety Risks, E.O. 13045, 62 FR 19885; Protection of Wetlands, E.O. 11990, 42 FR 26961; Recreational Fisheries, E.O. 12962, 60 FR 307695; Requiring Agencies to Purchase Energy Efficient Computer Equipment, E.O. 12845, 58 FR 21887; Resource Conservation and Recovery Act of 1976 (RCRA), Pub.L. 94–580, 42 U.S.C. 6901, *et seq.;* Responsibilities of Federal Agencies to Protect Migratory Birds, E.O. 13186, 66 FR 3853; Safe Drinking Water Act (SDWA), Pub.L. 93–523, 42, U.S.C. 201, *et seq.;* Toxic Substances Control Act (TSCA), 7 U.S.C. 136, *et seq.;* and Wild and Scenic Rivers Act, Pub.L. 90–542, 16 U.S.C. 1271, *et seq.*

(b) In addition, the port must comply with the applicable NEPA requirements for preparation of a single, detailed environmental study.

PART 149—DEEPWATER PORTS: DESIGN, CONSTRUCTION, AND EQUIPMENT

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Authority: 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

Subpart A—General

§149.1 What does this part do?

This part provides requirements for the design and construction of deepwater ports. It also provides the requirements for equipment for deepwater ports.

§149.5 What definitions apply to this part?

Definitions applicable to this part appear in 33 CFR 148.5. In addition, the following terms are used in this part and have the indicated meanings:

Accommodation module means a module with one or more accommodation spaces that is individually contracted for and may be used on one or more facilities.

Major conversion means a conversion, as determined by the Commandant (G–M), that substantially changes the dimensions of a facility, substantially changes the water depth capability of a fixed facility, substantially changes the carrying capacity of a floating facility, changes the type of a facility, substantially prolongs the life of a facility, or otherwise so changes the facility that it is essentially a new facility.

Service space means a space used for a galley, pantry containing cooking appliances, storeroom, or workshop other than those in industrial areas and trunks to those spaces.

Sleeping space means a space provided with bunks for sleeping.

§ 149.10 Where can I obtain a list of Coast Guard approved equipment?

Where equipment in this subchapter must be of an approved type, the equipment must be specifically approved by the Commandant (G–M), and the Marine Safety Center for engineering equipment. A list of approved equipment, including all of the approval series, is available at: *http://cgmix.uscg.mil/Equipment.*

§ 149.15 What is the process for submitting alterations and modifications affecting the design and construction of a deepwater port?

(a) Alterations and modifications affecting the design and construction of a deepwater port must be submitted to Commandant (G–M) for review and approval if:

(1) A license has not yet been issued; or,

(2) A license has been issued but the port has not commenced operations; or,

(3) The alteration and modification are deemed a major conversion; or,

(4) The alteration or modification substantially changes the manner in which the port operates or is not in accordance with a condition of the license.

(b) All other alterations and modifications to the deepwater port must be submitted to the OCMI for review and approval.

(c) Approval for alterations and modifications proposed after a license has been issued will be contingent upon whether the proposed changes will affect the way the port operates or any conditions imposed in the license.

(d) The licensee is not authorized to proceed with alterations prior to approval by Commandant (G–M) for the conditions outlined in paragraph (a) and approval by the cognizant OCMI as required in paragraph (b) of this section.

(e) Commandant (G–M), during the review and approval process of a proposed alteration or modification, may consult with the Marine Safety Center and cooperating federal agencies possessing relevant technical expertise.

Subpart B—Pollution Prevention Equipment

§ 149.100 What does this subpart do?

This subpart provides requirements for pollution equipment on deepwater ports.

§ 149.103 What are the requirements for discharge containment and removal material and equipment?

(a) Each deepwater port must have a facility response plan that meets the requirements outlined in subpart F of part 154 of this chapter and be approved by the cognizant COTP.

(b) The facility response plan must identify adequate spill containment and removal equipment for port-specific spill scenarios.

(c) Response equipment and material must be pre-positioned for ready access and use onboard the deepwater port.

§ 149.105 What are the requirements for the overflow and relief valves?

(a) Each oil and natural gas transfer system (OTS/NGTS) must include a relief valve that, when activated, prevents pressure on any component of the OTS/NGTS from exceeding its maximum rated pressure.

(b) The transfer system overflow or relief valve must not allow a discharge into the sea.

§ 149.110 What are the requirements for pipeline end manifold shutoff valves?

Each pipeline end manifold must have a shutoff valve capable of operating both manually and from the pumping platform complex.

§ 149.115 What are the requirements for blank flange and shutoff valves?

Each floating hose string must have a blank flange and a shutoff valve at the vessel's manifold end.

§ 149.120 What are the requirements for manually operated shutoff valves?

Each oil and natural gas transfer line, passing through an SPM buoy, must have a manual shutoff valve on the buoy.

§ 149.125 What are the requirements for the malfunction detection system?

(a) Each oil and natural gas system, between a pumping platform complex and the shore, must have a system that can detect and locate leaks and other malfunctions, particularly in high-risk areas.

(b) The marine transfer area on an oil deepwater port must be equipped with a monitoring system in accordance with 154.525 of this chapter.

(c) A natural gas deepwater port must be equipped with gas detection equipment adequate for the type of transfer system (including storage and re-gasification) used. Commandant (G–M) will evaluate proposed leak detection systems for natural gas on an individual basis.

§ 149.130 What are the requirements for the cargo transfer system alarm?

(a) Each cargo transfer system must have an alarm to signal a malfunction or failure in the system.

(b) The alarm must sound automatically in the control room and:

(1) Be capable of being activated at the pumping platform complex;

(2) Have a signal audible in all areas of the pumping platform complex, except in areas under paragraph (b)(3) of this section;

(3) Have a high intensity flashing light in areas of high ambient noise levels where hearing protection is required under 150.615 of this chapter; and

(4) Be distinguishable from the general alarm.

(c) Tankers calling on unmanned deepwater ports must be equipped with a transfer system alarm described in this section.

§ 149.135 What should be marked on the cargo transfer system alarm switch?

Each switch for activating an alarm, and each audio or visual device for signaling an alarm, under 149.130, must

be identified by the words ''OIL TRANSFER ALARM'' or ''NATURAL GAS TRANSFER ALARM'' in red letters at least 1 inch high on a yellow background.

§ 149.140 What communications equipment must be on a deepwater port?

(a) Each deepwater port must have the following communications equipment:

(1) A means of continuous two-way voice communication among the deepwater port and the tankers, support vessels, and other vessels operating at the port. The means must be usable and effective in all phases of a transfer and in all conditions of weather at the port;

(2) A means to effectively indicate the need to use the communication system required by paragraph (a) of this section, even if the means is the communication system itself; and

(3) Equipment that, for each portable means of communication used to meet the requirements of this section, is:

(i) Certified under 46 CFR 111.105–11 to be operated in Group D, Class 1, Division 1 Atmosphere; and,

(ii) Permanently marked with the certification required in paragraph (a)(3)(i) of this section. As an alternative to this marking requirement, a document certifying that the portable radio devices in use are in compliance with this section may be kept at the deepwater port.

(b) The communication system of the tank ship mooring at an unmanned port will be deemed the primary means of communicating with support vessels, shore side, etc.

§ 149.145 What are the requirements for curbs, gutters, drains, and reservoirs?

Each pumping platform complex must have enough curbs, gutters, drains, and reservoirs to collect, in the reservoirs, all oil and contaminants not authorized for discharge into the ocean according to the port's National Pollution Discharge Elimination System (NPDES) permit.

Subpart C—Lifesaving Equipment

§149.300 What does this subpart do?

This subpart provides requirements for lifesaving equipment on deepwater ports.

Manned Deepwater Port Requirements

§ 149.301 What are the requirements for lifesaving equipment?

(a) Each deepwater port on which at least one person occupies an accommodation space for more than 30 consecutive days, in any successive 12-month period, must comply with the requirements for lifesaving equipment in this subpart.

(b) Each deepwater port, not under paragraph (a) of this section, must comply with the requirements for lifesaving equipment for unmanned deepwater ports in this subpart.

§ 149.302 What are the requirements when lifesaving equipment is repaired or replaced?

When lifesaving equipment is replaced or when the deepwater port undergoes a repair, alteration, or modification that involves replacing or adding to the lifesaving equipment complement, the new lifesaving equipment must meet the requirements of this subpart.

§ 149.303 What survival craft and rescue boats may be used on a manned deepwater port?

(a) Each survival craft on a manned deepwater port must be one of the following:

(1) A lifeboat meeting the requirements of 149.306 to this subpart; or

(2) A liferaft meeting the requirements of 149.308 to this subpart.

(b) Each rescue boat on a manned deepwater port must be a rescue boat meeting the requirements of § 149.314 to this part.

§ 149.304 What type and how many survival craft and rescue boats must a manned deepwater port have?

(a) Except as specified under § 149.305 to this subpart, each manned deepwater port must have at least the type and number of survival craft and the number of rescue boats indicated for the deepwater port in paragraphs (a)(1) through (a)(5) of this section.

(1) For a deepwater port with 30 or fewer persons onboard:

(i) One or more lifeboats with a total capacity of 100 percent of the personnel onboard;

(ii) One or more liferafts with a total capacity of 100 percent of the personnel onboard; and

(iii) One rescue boat, except that the rescue boat is not required for deepwater ports with 8 or fewer persons onboard.

(2) For a deepwater port with 31 or more persons onboard:

(i) At least two lifeboats with a total capacity of 100 percent of the personnel onboard;

(ii) One or more liferafts with a total capacity so that, if the survival craft at any one location are rendered unusable, there will be craft remaining with 100 percent capacity; and

(iii) One rescue boat.

(3) Lifeboats may be substituted for liferafts.

(4) Capacity refers to the total number of persons on the deepwater port at any one time, not including temporary personnel. Temporary personnel include: contract workers, official visitors, and any other persons who are not permanent employees. See § 149.305 in this subpart for additional survival craft requirements when temporary personnel are onboard.

(5) The required lifeboats may be used as rescue boats if the lifeboats also meet the requirements for rescue boats in § 149.314 to this subpart.

(b) Deepwater ports consisting of novel structures or a combination of fixed and/or floating structures may require additional survival craft as deemed necessary by Commandant (G–M). In these cases, the type and number of survival craft must be specified in the operations manual.

§ 149.305 What are the survival craft requirements for temporary personnel?

(a) When temporary personnel are onboard a manned deepwater port and the complement exceeds the capacity of the survival craft required under 149.304 to this subpart, the port must have additional liferafts to ensure that the total capacity of the survival craft is not less than 200 percent of the personnel on board at any time.

(b) The liferafts required in paragraph (a) of this section need not meet the launching requirements of paragraph (b) to § 149.308 of this subpart, but must comply with the stowage requirements of 46 CFR 108.530(c).

§ 149.306 What are the requirements for lifeboats?

(a) Lifeboats must be:

(1) Totally enclosed and Coast Guard-approved fire-protected lifeboats; and

(2) If the hull or canopy is of aluminum, it must be protected in its stowage position by a water-spray system meeting 46 CFR 34.25.

(b) Each lifeboat must have at least the provisions and survival equipment required by 46 CFR 108.575(b).

(c) Except for boathooks, the equipment under paragraph (b) of this section must be securely stowed in the lifeboat.

(d) Each lifeboat must have a list of the equipment it is required to carry under paragraph (c) of this section. The list must be posted in the lifeboat.

(e) The manufacturer's instructions for maintenance and repair of the lifeboat, required under paragraph (a) to § 150.502 of this chapter, must be in the lifeboat or on a deepwater port.

§ 149.307 What are the requirements for free-fall lifeboats?

All free-fall lifeboats must be approved under approval series 46 CFR 160.135.

§ 149.308 What are the requirements for liferafts?

(a) All liferafts must be an inflatable liferaft—approved under approval series 46 CFR 160.151, or a rigid liferaft—approved under approval series 46 CFR 160.118.

(b) Except as under paragraph (b) to 149.305 of this subpart, each inflatable or rigid liferaft, boarded from a deck that is more than 14 feet 9 inches above the water, must be davit launched or served by a marine evacuation system complying with 149.309 to this subpart.

§ 149.309 What are the requirements for marine evacuation systems?

All marine evacuation systems must be Coast Guard-approved, and comply with the launching arrangement requirements for MODU in 46 CFR 108.545.

§ 149.310 What are the muster and embarkation requirements for survival craft?

Muster and embarkation arrangements for survival craft must comply with 46 CFR 108.540.

§ 149.311 What are the launching and recovery requirements for lifeboats?

(a) Each lifeboat launched by falls, must have a launching and recovery system that complies with 46 CFR 108.555.

(b) Each free-fall lifeboat must have a launching and recovery system that complies with 46 CFR 108.557.

§ 149.312 What are the launching equipment requirements for inflatable liferafts?

(a) Each inflatable liferaft, not intended for davit launching, must be capable of rapid deployment.

(b) Each davit-launchable liferaft must have the following launching equipment at each launching station:

(1) A launching device approved under approval series 46 CFR 160.163; and

(2) A mechanical disengaging apparatus approved under the approval series 46 CFR 160.170.

(c) The launching equipment must be operative, both from the liferaft and from the deepwater port.

(d) Winch controls must be located so that the operator can observe the liferaft launching.

(e) The launching equipment must be arranged so that a loaded liferaft does not have to be lifted before it is lowered.

(f) Not more than two liferafts may be launched from the same set of launching equipment.

§ 149.313 How must survival craft be arranged?

The operator must arrange survival craft so that they meet the requirements of 46 CFR 108.525 (a) and 108.530 and:

(a) Are readily accessible in an emergency;

(b) Are accessible for inspection, maintenance, and testing;

(c) Are in locations clear of overboard discharge piping (or openings) and obstructions below; and

(d) Have the aggregate capacity to accommodate the total number of persons authorized to be berthed and are located so as to provide ready access to the personnel berthing area.

§ 149.314 What are the approval and stowage requirements for rescue boats?

(a) Rescue boats must be approved under approval series 46 CFR 160.156. A lifeboat is acceptable as a rescue boat if it also meets the requirements for a rescue boat under approval series 46 CFR 160.156.

(b) The stowage of rescue boats must comply with 46 CFR 108.565.

§ 149.315 What embarkation, launching, and recovery arrangements must rescue boats meet?

(a) Each rescue boat must be capable of being launched in a current of up to 5 knots. A painter may be used to meet this requirement.

(b) Each rescue boat embarkation and launching arrangement must permit the rescue boat to be boarded and launched in the shortest possible time.

(c) If the rescue boat is one of the deepwater port's survival craft, the rescue boat must comply with the muster and embarkation arrangement requirements of 149.310.

(d) The rescue boat must comply with the embarkation arrangement requirements of 46 CFR 108.555.

(e) If the launching arrangement uses a single fall, the rescue boat may have an automatic disengaging apparatus, approved under approval series 46 CFR 160.170, instead of a lifeboat release mechanism.

(f) The rescue boat must be capable of being recovered rapidly when loaded with its full complement of persons and equipment. If a lifeboat is being used as a rescue boat, rapid recovery must be possible when loaded with its lifeboat equipment and a rescue boat's complement of at least six persons.

(g) Each rescue boat-launching appliance must be fitted with a powered winch motor.

(h) Each rescue boat-launching appliance must be capable of hoisting the rescue boat, when loaded with a rescue boat's full complement of persons and equipment, at a rate of not less than 59 feet per minute.

(i) The operator may use an onboard crane to launch a rescue boat if the crane's launching system meets the requirements of this section.

§ 149.316 What are the requirements for lifejackets?

(a) Each lifejacket must be approved under approval series 46 CFR 160.002, 160.005, 160.055, 160.077, or 160.176.

(b) Each lifejacket must have a lifejacket light—approved under approval series 46 CFR 161.012. Each light must be securely attached to the front shoulder area of the lifejacket.

(c) Each lifejacket must have a whistle permanently attached to the lifejacket by a cord.

(d) Each lifejacket must be marked with Type I retro-reflective material—approved under approval series 46 CFR 164.018.

§ 149.317 How and where must lifejackets be stowed?

(a) The operator must ensure that lifejackets are stowed, in readily accessible places, in, or adjacent to, accommodation spaces.

(b) Lifejacket stowage containers, and the spaces housing the containers, must not be capable of being locked.

(c) The operator must mark each lifejacket container, or lifejacket stowage location, with the words ''LIFEJACKETS'' in block letters and the quantity, identity, and size of the lifejackets stowed inside the containers or stowed at the location.

§ 149.318 Must every person on the port have a lifejacket?

The operator must provide a lifejacket that complies with 149.316 to this subpart, for each person on a manned deepwater port.

§ 149.319 What additional lifejackets must I have?

For each person on duty in a location where the lifejacket required by 149.317 of this subpart is not readily accessible, an additional lifejacket must be stowed so as to be readily accessible to that location.

§ 149.320 What are the requirements for ring lifebuoys?

(a) Ring lifebuoys must be approved under approval series 46 CFR 160.050 or 160.150 (for SOLAS-approved equipment).

(b) Each ring lifebuoy must have a floating, electric water light—approved under approval series 46 CFR 161.010. The operator must ensure that the light to the ring lifebuoy is attached by a lanyard of 12-thread manila, or a

synthetic rope of equivalent strength, not less than 3 feet nor more than 6 feet in length. The light must be mounted on a bracket near the ring lifebuoy so that, when the ring lifebuoy is cast loose, the light will be pulled free of the bracket.

(c) To each ring lifebuoy, there must be attached a buoyant line of 100 feet in length, with a breaking strength of at least 5 KiloNewtons force. The end of the line must not be secured to the deepwater port.

(d) Each ring lifebuoy must be marked with Type II retro-reflective material—approved under approval series 46 CFR 164.018.

§ 149.321 How many ring lifebuoys must be on each deepwater port?

There must be at least four approved ring lifebuoys on each manned deepwater port.

§ 149.322 Where must ring lifebuoys be located and how must they be stowed?

(a) The operator must locate one ring lifebuoy on each side of the port and one near each external stairway leading to the water. One buoy may be used to satisfy both these requirements.

(b) Each ring lifebuoy must be stowed on or in a rack that is readily accessible in an emergency. The ring lifebuoy must not be permanently secured in any way to the rack or the deepwater port.

§ 149.323 What are the requirements for first aid kits?

(a) Each manned deepwater port must have an industrial first aid kit approved by an appropriate organization (*e.g.,* American Red Cross) for the maximum number of persons on the deepwater port.

(b) The first aid kit must be maintained in a space designated as a medical treatment room or, if there is no medical treatment room, under the custody of the person in charge.

(c) The operator must ensure that each first aid kit is accompanied by a copy of DHHS Publication No. (PHS) 84–2024: ''The Ship's Medicine Chest and Medical Aid at Sea''—available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or the ''American Red Cross First Aid and Safety Handbook''—available from Little Brown and Company, 3 Center Plaza, Boston, MA 02018.

§ 149.324 What are the requirements for litters?

Each manned deepwater port must have at least one Stokes litter, or other suitable litter, capable of being safely hoisted with an injured person. The litter must be readily accessible in an emergency.

§ 149.325 What emergency communications equipment must be on a manned deepwater port?

Each manned deepwater port must have a radio, telephone, or other means of emergency communication with the shore, vessels, and facilities in the vicinity in the event the primary communications system outlined in § 149.140 fails. This communication equipment must have an emergency power source.

§ 149.326 What are the immersion suit requirements?

Each manned deepwater port, located North of 32 degrees North latitude, must comply with the immersion suit requirements in 46 CFR part 108.

§ 149.327 What are the approval requirements for work vests and anti-exposure suits?

All work vests and anti-exposure (deck) suits, on a manned deepwater port, must be of a buoyant type approved under:

(a) Approval series 46 CFR 160.053 as a work vest;

(b) Approval series 46 CFR 160.053 or 160.153 as an anti-exposure suit; or

(c) Approval series 46 CFR 160.077 as a commercial hybrid personal flotation device.

§ 149.328 How must work vests and anti-exposure (deck) suits be stowed?

All work vests and deck suits must be stowed separately from lifejackets and in a location that is not easily confused with a storage area for lifejackets.

§ 149.329 How must work vests and deck suits be marked?

All work vests and deck suits must be marked with Type II retro-reflective material—approved under approval series 46 CFR 164.018.

§ 149.330 When may a work vest or deck suit be substituted for a lifejacket?

(a) A work vest or deck suit meeting § 149.326 of this subpart may be used instead of a lifejacket, when personnel are working near or over water.

(b) Work vests or deck suits may not be substituted for any portion of the number of approved lifejackets required to be on the deepwater port or an attending vessel for use during drills and emergencies.

§ 149.331 What are the requirements for hybrid personal flotation devices?

(a) The operator must ensure use and stowage of all commercial hybrid personal flotation devices (PFDs) used as work vests under:

(1) The procedures in the manual required for these devices in 46 CFR 160.077–29; and

(2) All limitations, if any, marked on them.

(b) All commercial hybrid PFDs on the deepwater port must be of the same or similar design and must have the same method of operation.

§ 149.332 What are the requirements for inflatable lifejackets?

(a) Each inflatable lifejacket must be approved under approval series 46 CFR 160.176.

(b) All inflatable lifejackets on a deepwater port must:

(1) Be used and stowed under the procedures in the manual required for these lifejackets under 46 CFR 160.176–21;

(2) Be marked with all limitations, if any; and

(3) Be of the same or similar design and must have the same method of operation.

§ 149.333 What are the marking requirements for lifesaving equipment?

(a) Each lifeboat, rigid liferaft, and survival capsule must be marked on two opposite outboard sides with the name, number, or other inscription identifying the deepwater port on which placed and the number of persons permitted on the craft. Each paddle or oar for these crafts must be marked with an inscription identifying the deepwater port. The letters and numbers must be at least 100 millimeters (3.94 inches) high on a contrasting background.

(b) Each inflatable liferaft must be marked to meet 46 CFR 160.151–33, and after each servicing, 46 CFR 160.151–57(m).

(c) All lifejackets and ring lifebuoys must be conspicuously marked with the name, number, or other inscription identifying the deepwater port on which placed. The letters and numbers must be at least 1.5 inches high on a contrasting background. Lifejackets and ring lifebuoys that accompany mobile crews to unmanned deepwater ports may be marked with the operator's name and field designation.

Unmanned Deepwater Port Requirements

§ 149.334 Who must ensure compliance with the requirements for unmanned deepwater ports?

The owner or operator of an unmanned deepwater port must ensure that applicable requirements are complied with on their deepwater port.

§ 149.335 When are people prohibited from being on a unmanned deepwater port?

No person may be on a unmanned deepwater port unless all requirements of this part are met.

§ 149.336 What are the requirements for lifejackets?

(a) Except as under paragraph (b) of this section, each unmanned deepwater port must have at least one lifejacket complying with 149.316 to this subpart, for each person on the deepwater port. The lifejackets need to be available for use on the port only when persons are onboard.

(b) During helicopter visits, personnel who have aircraft type lifejackets may use them as an alternative to the requirements of paragraph (a) of this section.

§ 149.337 What are the requirements for ring lifebuoys?

(a) Each unmanned deepwater port must have at least one ring lifebuoy complying with 149.320 to this subpart.

(b) If there is no space on the deepwater port for the ring lifebuoys, they must be on a manned vessel located alongside of the deepwater port while the persons are on the port.

§ 149.338 What are the requirements for immersion suits?

(a) Each unmanned deepwater port, located North of 32 degrees North latitude, must comply with the immersion suit requirements applicable to MODU under 46 CFR 108.580—approval series 46 CFR 160.171. Except as under paragraph (b) of this section, the immersion suits need be on the deepwater port only when persons are onboard.

(b) If an attending vessel is moored to the unmanned deepwater port, the suits may be stowed on the vessel, instead of on the deepwater port.

§ 149.339 What is the requirement for a previously approved lifesaving equipment on a deepwater port?

Lifesaving equipment (*e.g.,* lifeboats, life rafts, PFDs) on a deepwater port on January 1, 2004, need not meet the requirements in this subpart until the equipment needs replacing, provided it is periodically tested and maintained in good operational condition.

§ 149.340 What are the requirements for lifesaving equipment that is not required by this subchapter?

Each item of lifesaving equipment on a deepwater port that is not required by this subchapter must be approved by the Commandant (G–M).

Subpart D—Firefighting and Fire-Protection Equipment

§ 149.400 What does this subpart apply to?

This subpart applies to all deepwater ports with the exception of an unmanned port consisting of a submerged turret loading (STL) or comparable configuration in which cargo transfer operations are conducted solely aboard the tank vessel by the vessel crew.

§ 149.401 What are the general requirements for firefighting and fire-protection equipment?

Each deepwater port must comply with the requirements for firefighting and fire-protection equipment in this subpart.

§ 149.402 What equipment must be approved by the Coast Guard?

Except as permitted under 149.403, 149.415 (c) or (d), 149.421 (a), or 149.422, all required firefighting and fire-protection equipment on a deepwater port must be approved by the Commandant (G–MSE). Firefighting and fire-protection equipment that supplements required equipment must also be approved by the Commandant (G–MSE) unless approval by the OCMI is requested and granted pursuant to 149.403 of this subpart.

§ 149.403 Use of alternate firefighting, fire prevention equipment, or procedures.

(a) The operator may request the use of alternate equipment or procedures for those required in this subchapter.

(b) Upon request, the OCMI may allow the use of alternate equipment or procedures if they will:

(1) Accomplish the purposes for the requirement; and

(2) Provide a degree of safety equivalent to, or greater than, that provided by the requirement.

(c) The OCMI may require that the requesting party:

(1) Explain why applying the requirement would be unreasonable or impracticable; or

(2) Submit engineering calculations, tests, or other data to demonstrate how the requested alternative would comply with paragraph (b) of this section.

(d) The OCMI may determine, on a case-by-case basis, that Commandant (G–MSE) must approve the use of the alternate equipment or procedure.

Firefighting Requirements

§ 149.404 Can I use firefighting equipment for which there is no Coast Guard standard?

A deepwater port may use firefighting equipment for which there is no Coast Guard standard, as excess equipment, if the equipment does not endanger the port or the persons aboard in any way. This equipment must be listed and labeled by a nationally recognized testing laboratory and it must be maintained in good working condition.

§ 149.405 How are fire extinguishers classified?

(a) Portable and semi-portable extinguishers on a manned deepwater port must be classified using the Coast Guard's marine rating system of combination letter and number symbol. The letter indicates the type of fire that the extinguisher is designed to extinguish, and the number indicates the relative size of the extinguisher.

(b) The letter designations are as follows:

(1) ''A'' for fires in ordinary combustible materials where the quenching and cooling effects of quantities of water, or solutions containing large percentages of water, are of first importance;

(2) ''B'' for fires in flammable liquids, greases, or other thick flammable substances, where a blanketing effect is essential; and

(3) ''C'' for fires in electrical equipment where the use of a non-conducting extinguishing agent is of first importance.

(c) The number designations for size range from ''I'' for the smallest extinguisher to ''V'' for the largest. Sizes I and II are portable extinguishers. Sizes III, IV, and V are semi-portable extinguishers which must be fitted with suitable hose and nozzle or other practicable means so that all portions of the space concerned may be covered. Examples of size graduations for some of the typical portable and semi-portable extinguishers are set forth in table 149.405.

TABLE 149.405—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS

Classification type-size	Foam liters (gallons)	Carbon dioxide kilograms (pounds)	Dry chemical kilograms (pounds)
A–II	9.5 (2.5)		2.25(5) [1]
B–II	9.5 (2.5)	6.7 (15)	4.5 (10)
C–II		6.7 (15)	4.5 (10)

TABLE 149.405—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS—Continued

Classification type-size	Foam liters (gallons)	Carbon dioxide kilograms (pounds)	Dry chemical kilograms (pounds)
B–IV	7.6 (20)	22.5 (50)	13.5 (30)
B–V	15.2 (40)	45 (100)[2]	22.5 (50)[2]

Notes:
[1] Must be specifically approved as a type ''A,'' ''B,'' or ''C'' extinguisher.
[2] For outside use, double the quantity of agent that must be carried.

§ 149.406 What are the approval requirements for a fire extinguisher?

All portable and semi-portable fire extinguishers must be of an approved type under 46 CFR part 162, subparts 162.028 and 162.039, respectively.

§ 149.407 Must fire extinguishers be on the deepwater port at all times?

(a) On a manned deepwater port, the fire extinguishers required by 149.409 to this subpart must be on the deepwater port at all times.

(b) On an unmanned deepwater port, the fire extinguishers required by 149.409 to this part need be on the deepwater port only when personnel are working on the deepwater port during cargo transfer operations or performing maintenance duties.

§ 149.408 What are the maintenance requirements for a fire extinguisher?

All fire extinguishers must be maintained in good working order and serviced annually in accordance with 46 CFR 107.235.

§ 149.409 How many fire extinguishers are needed?

Each particular location must have the number of fire extinguishers required by table 149.409.

TABLE 149.409—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS, MINIMUM QUANTITY AND LOCATION

Space	Classification	Minimum quantity and location
(a) Safety Areas:		
(1) Communicating corridors	A–II	One in each main corridor or stairway not more than 150 feet apart.
(2) Radio room	C–II	One outside of or near each radio room exit.
(b) Accommodation Spaces: (1) Sleeping quarters	A–II	One in each sleeping space for more than four persons.
(c) Service Spaces:		
(1) Galleys	B–II or CII	One for each 2,500 square feet or fraction thereof for hazards involved.
(2) Storerooms	A–II	One for each 2,500 square feet or fraction thereof located near each exit, either inside or outside of the space.
(3) Paint room	B–II	One outside each paint room exit.
(d) Machinery Spaces:		
(1) Gas-fired boilers	B–II OR C–II	Two.
(2) Gas-fired boilers	B–V	One.[1]
(3) Oil-fired boilers	B–II	Two.
(4) Oil-fired boilers	B–V	Two.[1]
(5) Internal combustion or gas turbine engines	B–II	One for each engine.[2]
(6) Electric motors and generators, both of the open type.	C-II	One for each two motors or generators.[3]
(e) Helicopter Areas:		
(1) Helicopter landing decks	B–V	One at each access route.
(2) Helicopter fueling facility	B–V	One at each fuel transfer facility.[4]

[1] Not required if a fixed system is installed.
[2] If the engine is installed on a weather deck or is open to the atmosphere at all times, one B-II may be used for every three engines.
[3] Small electrical appliances, such as fans, are exempt.
[4] Not required if a fixed foam system is installed in accordance with paragraph of this part.

§ 149.410 Where must a portable or semi-portable fire extinguisher be located?

All portable and semi-portable fire extinguishers under table 149.409 must be located in the open so as to be readily seen.

§ 149.411 What are the requirements for fireman's outfits?

(a) Each manned deepwater port with nine or more persons must have at least two fireman's outfits complying with 46 CFR 108.497.

(b) The person in charge of safety must ensure that:

(1) At least two people trained in the use of fireman's outfits are on the deepwater port at all times;

(2) Each fireman's outfit and its spare equipment are stowed together in a readily accessible container or locker; that no more than one outfit is stowed in the same container or locker and that the two containers or lockers are located in separate areas to ensure that at least one is available at all times in the event of a fire; and

(3) Fireman's outfits are not used for any purpose other than firefighting.

§ 149.412 How many fire axes are needed?

Each manned deepwater port must have at least two fire axes per 46 CFR 108.499.

§ 149.413 On a manned deepwater port, what spaces require a fixed fire-extinguishing system?

The manned deepwater port spaces or systems listed in paragraphs (a) through (c) of this section must be protected by an approved fixed-gaseous, or other approved fixed-type, extinguishing system.

(a) Paint lockers of capacity in excess of 200 cubic feet and similar spaces containing flammable liquids.

(b) Galley range or deep fat fryer.

(c) Each enclosed space containing internal combustion or gas turbine machinery, with an aggregate power of more than 1,000 B.H.P., and any associated fuel oil units, purifiers, valves, or manifolds.

§ 149.414 What are the requirements for a fire-detection and alarm system?

(a) All accommodation and service spaces, on a manned deepwater port, and all spaces or systems of a deepwater port that process, store, transfer, and re-gasify liquefied natural gas, must have an automatic fire-detection and alarm system. The system must either comply with 46 CFR 108.405 or be designed and installed in compliance with a national consensus standard, as that term is defined in 29 CFR 1910.2, for fire-detection and fire alarm systems, and that complies with standards set by a nationally recognized testing laboratory, as that term is defined in 29 CFR 1910.7, for such systems or hardware.

(b) Sleeping quarters must be fitted with smoke detectors that have local alarms and that may, or may not, be connected to the central alarm panel.

(c) Each fire-detection and fire alarm system must have a visual alarm and an audible alarm at a normally manned area.

(d) Each fire-detection and fire alarm system must be divided into zones to limit the area covered by a particular alarm signal.

§ 149.415 What are the requirements for a fire-main system on a manned deepwater port?

(a) Each pumping platform complex must have a fixed fire-main system. The system must either:

(1) Comply with 46 CFR 108.415 through 108.429; or

(2) Comply with a national consensus standard, as that term is defined in 29 CFR 1910.2, for such systems and hardware and comply with the standards set by a nationally recognized testing laboratory, as that term is defined in 29 CFR 1910.7, for such systems and hardware.

(b) If the fire-main system meets the requirements outlined in paragraph (a)(2) of this section, it must provide, at a minimum, protection to:

(1) Accommodation spaces;

(2) Accommodation modules;

(3) Control spaces; and

(4) Other areas frequented by port personnel. The hose system must be capable of reaching all parts of these spaces without difficulty.

(d) The fire-main system, under paragraph (a)(2) of this section, may be part of a firewater system in accordance with 30 CFR 250.803.

(e) A fire-main system for a natural gas deepwater port must also comply with 33 CFR 127.607.

§ 149.416 What are the requirements for fire pumps?

(a) Each manned deepwater port must have at least two independently driven fire pumps. Each pump must be able to simultaneously deliver two streams of water at a pitot tube pressure of at least 50 p.s.i/345 k.p.a (75 p.s.i./520 k.p.a. for a natural gas deepwater port)—measured at the two most remote nozzles.

(b) Each fire pump must have:

(1) A relief valve on its discharge side that is set to relieve at 25 p.s.i/173 k.p.a in excess of the pressure necessary to meet the requirement in paragraph (a) of this section;

(2) A pressure gauge on its discharge side; and

(3) Its own sea connection.

(c) Fire pumps may only be connected to the fire-main system.

(d) The fire pumps required by paragraph (a) of this section must be located in separate spaces and the arrangement of pumps, sea connections, controls, and sources of power must be such as to ensure that a fire, in any one space, will not put all of the fire pumps out of service.

(e) The fire pumps must be capable of being started and stopped from outside the spaces in which they are located.

§ 149.417 What are the requirements for fire hydrants?

(a) Fire hydrants must comply with 46 CFR 108.423.

(b) A single length of fire hose, with an attached nozzle, must be connected to each fire hydrant at all times. If the hose is exposed to freezing weather, it may be removed from the location during freezing weather.

(c) Each fire hydrant must have a shutoff valve.

(d) Any equipment that is located in the same space as the fire hydrant must not impede access to the hydrant.

(e) Each fire hydrant must have at least one spanner wrench at the fire hydrant.

§ 149.418 What are the requirements for fire hoses and fire nozzles?

(a) Fire hoses must comply with 46 CFR 108.425 and be:

(1) Prominently marked in accordance with 46 CFR 97.37–15; and

(2) If in an exposed location, protected from freezing weather.

(b) Each fire hose and nozzle must comply with 46 CFR 108.425 or a national consensus standard, as that term is defined in 29 CFR 1910.2, for such hose and nozzle and the standards set by a nationally recognized testing laboratory, as that term is defined in 29 CFR 1910.7, for such hose.

§ 149.419 What are the requirements for a dry chemical fire-suppression system?

Each natural gas deepwater port must be equipped with a dry chemical system that meets the requirements of § 127.609 to this chapter.

§ 149.420 What firefighting equipment must a helicopter landing deck on a manned deepwater port have?

Each helicopter landing deck on a manned deepwater port must have the following:

(a) A fire hydrant and hose located near each stairway access to the landing deck. If the landing deck has more than two stairway accesses, only two stairway accesses need to have a fire hydrant and hose. The fire hydrants must be part of the fire-main system; and

(b) Portable fire extinguishers in the quantity and location as required in table 149.409.

§ 149.421 What fire-protection system must a helicopter fueling facility have?

In addition to the portable fire extinguishers required under table 149.409, each helicopter fueling facility must have a fire-protection system complying with 46 CFR 108.489.

§ 149.422 Can the water supply for the helicopter deck fire-protection system be part of a firewater system?

(a) The water supply for the helicopter deck fire-protection system required under §§ 149.420 or 149.421 may be part of:

(1) The firewater system (installed in accordance with MMS regulations under 30 CFR 250.803); or

(2) The fire-main system under § 149.415.

(b) If the water supply for the helicopter deck fire-protection system is part of an independent accommodation fire-main system, the piping design and hardware must be compatible with the system and must comply with the requirements for fire-mains in 46 CFR 108.415 through 108.429.

§ 149.423 What are the fire-protection requirements for escape routes?

At least one escape route from an accommodation space or module to a survival craft or other means of evacuation, must provide adequate protection, in accordance with 46 CFR 108.133, for escaping personnel from fires and explosions. Additional requirements for escape routes are in subpart F of this part.

§ 149.424 What is the requirement for a previously approved fire-detection and alarm system on a deepwater port?

An existing fire-detection and alarm system on a deepwater port need not meet the requirements in this subpart until the system needs replacing, provided it is periodically tested and maintained in good operational condition.

Subpart E—Aids to Navigation

General

§ 149.500 What does this subpart do?

This subpart provides requirements for aids to navigation on deepwater ports.

§ 149.505 What are the general requirements for aids to navigation?

The following requirements apply to aids to navigation under this subpart:

(a) Section 66.01–5 of this chapter on application to establish, maintain, discontinue, change, or transfer ownership of an aid, except as under 149.510;

(b) Section 66.01–25(a) and (c) of this chapter on discontinuing or removing an aid. For the purposes of § 66.01–25(a) and (c) of this chapter, aids to navigation at a deepwater port are considered Class I aids under § 66.01–15 of this chapter;

(c) Section 66.01–50 of this chapter on protection of an aid from interference and obstruction; and

(d) Section 66.01–55 of this chapter on transfer of ownership of an aid.

§ 149.510 Permission to establish an aid to navigation.

(a) To establish an aid to navigation on a deepwater port, the licensee must submit an application under § 66.01–5 of this chapter, except the application must be sent to the Commandant (G–M).

(b) At least 180 days before the installation of any structure at the site of a deepwater port, the licensee must submit an application for obstruction lights and other private aids to navigation for the particular construction site.

(c) At least 180 days before beginning cargo transfer operations or changing the mooring facilities at the deepwater port, the licensee must submit an application for private aids to navigation.

Lights

§ 149.520 What are the general lighting requirements?

All deepwater ports must meet the general requirements for obstruction lights in part 67 of this chapter.

Lights on Platforms

§ 149.535 What are the requirements for rotating beacons on platforms?

In addition to obstruction lights, the tallest platform of a deepwater port must have a rotating lighted beacon that distinguishes the deepwater port from other surrounding offshore structures. The beacon must:

(a) Have an effective intensity of at least 15,000 candela;

(b) Flash at least once every 20 seconds;

(c) Provide a white light signal;

(d) Operate in wind speeds up to 100 knots at a rotation rate that is within 6 percent of the operating speed displayed on the beacon;

(e) Have one or more leveling indicators permanently attached to the light, each with an accuracy of 0.25, or better; and

(f) Be located:

(1) At least 60 feet above mean high water;

(2) Where the structure of the platform, or equipment mounted on the platform, does not obstruct the light in any direction; and

(3) So that it is visible all around the horizon.

Lights on Single Point Moorings (SPM)

§ 149.540 What are the requirements for obstruction lights on an SPM?

(a) The lights for a single point mooring (SPM) must meet the requirements for obstruction lights in part 67 of this chapter, except that the lights must be located at least 10 feet above mean high water.

(b) A submerged turret loading (STL) deepwater port is not required to meet the requirements for obstruction lights, provided it maintains at least a five-foot clearance beneath the net under-keel clearance for all vessels, at the mean low water condition, transiting the area.

(c) An STL deepwater port that utilizes a marker buoy must be lighted in accordance with paragraph (a) of this section.

Lights on Floating Hose Strings

§ 149.550 What are the requirements for lights on a floating hose string?

Hose strings that are floating or supported on trestles shall display the following lights at night and in periods of restricted visibility.

(a) One row of yellow lights. The lights must be:

(1) Flashing 50 to 70 times per minute;

(2) Visible all around the horizon;

(3) Visible for at least 2 miles on a clear, dark night;

(4) Not less than 1 and not more than 3.5 meters above the water;

(5) Approximately equally spaced; and

(6) Not more than 10 meters apart where the hose string crosses a navigable channel, and, also, where the hose string does not cross a navigable channel, the lights must be sufficient in number to clearly show the hose string's length and course.

(b) Two red lights at each end of the hose string, including the ends in a channel where the hose string is separated to allow vessels to pass, whether open or closed. The lights must be:

(1) Visible all around the horizon;

(2) Visible for at least 2 miles on a clear, dark night; and

(3) One meter apart in a vertical line with the lower light at the same height above the water as the flashing yellow light.

Lights on Buoys Used To Define Traffic Lanes

§ 149.560 How must buoys used to define traffic lanes be marked and lighted?

(a) Each buoy that is used to define the lateral boundaries of a traffic lane at a deepwater port must meet 62.25 of this chapter.

(b) The buoy must have an omni-directional light located at least 8 feet above the water.

(c) The buoy light must be located so that the structure of the buoy, or any other device mounted on the buoy, does not obstruct the light in any direction.

§ 149.565 What are the required characteristics and intensity of lights on buoys used to define traffic lanes?

(a) The color of the light on a buoy that is used to define the lateral boundaries of a traffic lane must correspond with the color schemes for buoys in § 62.25 of this chapter.

(b) The buoy light may be fixed or flashing. If it is flashing, it must flash at intervals of not more than 6 seconds.

(c) Buoy lights must have an effective intensity of at least 25 candela.

Miscellaneous

§ 149.570 How is a platform, SPM, or STL identified?

(a) Each platform, SPM, or STL (protruding above the water/marked by a buoy) must display the name of the deepwater port and the name or number identifying the structure, so that the information is visible:

(1) From the water at all angles of approach to the structure; and

(2) If the structure is equipped with a helicopter pad, from aircraft on approach to the structure.

(b) The information required in paragraph (a) of this section must be displayed in numbers and letters that are:

(1) At least 12 inches high;

(2) In vertical block style; and

(3) Displayed against a contrasting background.

(c) If a STL protrudes from the water, it must be properly illuminated in accordance with § 149.540.

§ 149.575 How must objects protruding from the water, other than platforms and SPMs, be marked?

(a) Each object protruding from the water that is within 100 yards of a platform or SPM must be marked with white reflective tape.

(b) Each object protruding from the water that is more than 100 yards from a platform or SPM must meet the obstruction lighting requirements in this subpart for a platform.

§ 149.580 What are the requirements for a radar beacon?

(a) A radar beacon must be located on the tallest platform of a pumping platform complex or other fixed structure of the deepwater port.

(b) The beacon must meet the following:

(1) Be an FCC-type-accepted radar beacon (RACON);

(2) Transmit:

(i) In both the 2900–3100 MHz and 9300–9500 MHz frequency bands; or

(ii) If installed before July 8, 1991, in the 9320–9500 MHz frequency band;

(3) Transmit a signal of at least 250 milliwatts radiated power that is omni-directional and polarized in the horizontal plane;

(4) Transmit a two or more element Morse code character, the length of which does not exceed 25 percent of the radar range expected to be used by vessels operating in the area;

(5) If of the frequency agile type, be programmed so that it will respond, at least 40 percent of the time, but not more than 90 percent of the time, with a response time duration of at least 24 seconds; and

(6) Be located at a minimum height of 15 feet above the highest deck of the platform and where the structure of the platform, or equipment mounted on the platform, does not obstruct the signal propagation in any direction.

§ 149.585 What are the requirements for sound signals?

(a) Each pumping platform complex must have a sound signal, approved under subpart 67.10 of this chapter, that has a 2-mile (3-kilometer) range. A list of Coast Guard approved sound signals is available from any District Commander.

(b) Each sound signal must be:

(1) Located at least 10 feet but not more than 150 feet above mean high water; and

(2) Located where the structure of the platform, or equipment mounted on it, does not obstruct the sound of the signal in any direction.

Subpart F—Design and Equipment

General

§ 149.600 What does this subpart do?

This subpart provides general requirements for equipment and design on deepwater ports.

§ 149.610 What must the District Commander be notified of and when?

The District Commander must be notified of the following:

When—	The District Commander must be notified—
(a) Construction of a pipeline, platform, or SPM is planned.	At least 30 days before construction begins.
(b) Construction of a pipeline, platform, or SPM begins.	Within 24 hours, from the date construction begins, that the lights and sound signals are in use at the construction site.
(c) A light or sound signal is changed during construction.	Within 24 hours of the change.
(d) Lights or sound signals used during construction of a platform, buoy, or SPM are replaced by permanent fixtures to meet the requirements of this part.	Within 24 hours of the replacement.
(e) The first cargo transfer operation begins.	At least 60 days before the operation.

§ 149.615 What construction drawings and specifications are required?

(a) To show compliance with the Act and this subchapter, the licensee must submit to the Commandant (G–M) three copies of:

(1) Each construction drawing and specification; and

(2) Each revision to a drawing and specification.

(b) Each drawing, specification, and revision under paragraph (a) of this section must bear the seal, or a facsimile imprint of the seal, of the registered professional engineer responsible for the accuracy and adequacy of the material.

§ 149.620 What happens when the Commandant (G–M) reviews and evaluates the construction drawings and specifications?

(a) The Commandant (G–M) may concurrently review and evaluate construction drawings and specifications with the Marine Safety Center and other federal agencies having technical expertise (such as RSPA and FERC) in order to ensure compliance with the Act and this subchapter.

(b) Construction may not begin until the drawings and specifications are approved by the Commandant (G–M).

(c) Once construction begins, the Coast Guard periodically inspects the construction site to ensure that the construction complies with the drawings and specifications approved under paragraph (b) of this section.

(d) When construction is complete, the licensee must submit two complete sets of as-built drawings and specifications to the Commandant (G–M).

§ 149.625 What are the design standards?

(a) Each component, except for hoses, mooring lines, and aids to navigation buoys, must be designed to withstand at least the combined wind, wave, and current forces of the most severe storm that can be expected to occur at the deepwater port in any 100-year period. Component design must be appropriate for the protection of human life on the port or on vessels calling on or servicing the port from death or serious injury, and to protect the environment.

(b) Heliports on floating deepwater ports must be designed in compliance with the regulations at 46 CFR part 108.

Structural Fire-Protection

§ 149.640 What are the requirements for systems fire-protection?

Manned deepwater ports built after January 1, 2004 and manned deepwater ports that undergo major conversions must comply with the requirements for structural fire-protection outlined in this subpart.

§ 149.641 What are the requirements for structural fire-protection for deepwater ports in accommodation spaces and modules?

(a) Accommodations spaces and modules must be designed, located, and constructed so as to minimize the effects of flame, excess heat, or blast effects caused by fires and explosions; and to provide safe refuge from fires and explosions for personnel for the minimum time needed to evacuate the space.

(b) This requirement may be met by complying with the applicable portions of 46 CFR part 108, provided that:

(1) The exterior boundaries of superstructures and deckhouses enclosing these spaces and modules, including any overhanging deck that supports these spaces and modules, are constructed to the A–60 standard defined in 46 CFR 108.131(b)(2) for any portion that faces, and is within 100 feet of, the platform hydrocarbon source; and

(2) The ventilation system must have a means of shutting down the system and an alarm at a manned location that sounds when any hazardous or toxic substance enters the system.

(c) As an alternative to paragraph (b) of this section, the requirement imposed by this section may be met by complying with a national consensus standard, as that term is defined in 29 CFR 1910.2, for the structural fire-protection of accommodation spaces and modules, and that complies with the standards set by a nationally recognized testing laboratory, as that term is defined by 29 CFR 1910.7, for such protection, provided that:

(1) All such spaces and modules on manned ports are provided with automatic fire-detection and alarm systems. The alarm system must signal a normally manned area both visually and audibly, and be divided into zones to limit the area covered by a particular alarm signal;

(2) Sleeping quarters are fitted with smoke detectors that have local alarms that may, or may not, be connected with the central alarm panel; and

(3) Independent fire walls are constructed and installed so as to be of size and orientation sufficient to protect the exterior surfaces of the spaces or modules from extreme radiant heat flux levels and provide the A–60 standard defined in 46 CFR 108.131(b)(2).

Single Point Moorings

§ 149.650 What are the requirements for single point moorings and their attached hoses?

Each SPM and its attached hose must be designed appropriately for the protection of the environment and for durability under combined wind, wave, and current forces of the most severe storm that can be expected to occur at the port in any 100-year period. The appropriateness of a design may be shown by its compliance with standards generally used within the offshore industry that are at least equivalent, in protecting the environment, to the standards in use on January 1, 2003, by the American Bureau of Shipping or another recognized classification society.

Helicopter Fueling Facilities

§ 149.655 What are the requirements for helicopter fueling facilities?

Helicopter fueling facilities must comply with 46 CFR 108.489 or an equivalent standard.

Emergency Power

§ 149.660 What are the requirements for emergency power?

(a) Each pumping platform complex must have emergency power equipment to provide power to operate simultaneously all of the following for a continuous period of 18 hours:

(1) Emergency lighting circuits;

(2) Aids to navigation equipment;

(3) Communications equipment;

(4) Radar equipment;

(5) Alarm systems;

(6) Electrically operated fire pumps; and

(7) Other electrical equipment identified as emergency equipment in the operations manual for the deepwater port.

(b) No emergency power generating equipment may be located in any enclosed space on a platform that contains oil or natural gas transfer pumping equipment or other power generating equipment.

General Alarm System

§ 149.665 What are the requirements for a general alarm system?

Each pumping platform complex must have a general alarm system that meets the following:

(a) Is capable of being activated manually by the use of alarm boxes;

(b) Is audible in all parts of the pumping platform complex, except in areas of high ambient noise levels where hearing protection is required under § 150.613 of this chapter; and

(c) Has a high intensity flashing light in areas where hearing protection is used.

§ 149.670 What are the requirements for marking a general alarm system?

Each of the following must be marked with the words ''GENERAL ALARM'' in yellow letters at least 1-inch high on a red background:

(a) Each general alarm box; and

(b) Each audio or visual device under § 149.665 for signaling the general alarm.

Public Address System

§ 149.675 What are the requirements for the public address system?

Each pumping platform complex must have a public address system operable from two locations on the complex.

Medical Treatment Rooms

§ 149.680 What are the requirements for medical treatment rooms?

Each deepwater port with sleeping spaces for 12 or more persons, including persons in accommodation modules, must have a medical treatment room that has:

(a) A sign at the entrance designating it as a medical treatment room;

(b) An entrance that is wide enough and arranged to readily admit a person on a stretcher;

(c) A single berth or examination table that is accessible from both sides; and

(d) A washbasin located in the room.

§ 149.685 May a medical treatment room be used for other purposes?

A medical treatment room may be used as a sleeping space if the room meets the requirements of this subpart for both medical treatment rooms and sleeping spaces. It may also be used as an office. However, when used for medical purposes, the room may not be used as a sleeping space or office.

Miscellaneous

§ 149.690 What are the requirements for means of escape, personnel landings, guardrails, and similar devices and for noise limits?

Each deepwater port must comply with the requirements for means of escape, personnel landings, guardrails and similar devices, and noise limits as outlined in §§ 149.691 through 149.699.

Means of Escape

§ 149.691 What means of escape are required?

(a) Each deepwater port must have the primary and secondary means of escape complying with 46 CFR 108.151 for use in evacuating the port.

(b) A primary means of escape consists of a fixed stairway, or a fixed ladder, constructed of steel.

(c) A secondary means of escape consists of a marine evacuation system, a portable flexible ladder, a knotted manrope, or a similar device determined by the OCMI to provide an equivalent or better means of escape.

(d) Where a secondary means of escape is required, a primary means of escape may be substituted.

§ 149.692 Where must they be located?

(a) Each means of escape must be easily accessible to personnel for rapidly evacuating the deepwater port.

(b) When two or more means of escape are installed, at least two must be located as nearly diagonally opposite each other as practicable.

(c) The following spaces, with a floor area of 300 square feet or more, must have at least two exits as widely spaced as possible:

(1) Each accommodation space; and

(2) Each space that is used on a regular basis, such as a control room, machinery room, storeroom, or other space where personnel could be trapped in an emergency.

(d) Structural appendages to the deepwater port that do not have living quarters, workshops, offices, or other manned spaces and that personnel do not occupy continuously (*i.e.*, pumping platform complex) must have at least one primary means of escape and, as determined necessary by the OCMI, one or more secondary means of escape.

(e) When personnel are on an unmanned deepwater port, the port must have, in addition to the one primary means of escape, either:

(1) Another primary means of escape; or

(2) One or more secondary means of escape for every 10 persons onboard at any one time—located in the work areas.

(f) Structural appendages to an unmanned deepwater port do not require a primary or a secondary means of escape, unless the OCMI determines that one or more are necessary.

(g) Each means of escape must extend from the deepwater port's uppermost working level, to each successively lower working level, and so on to the water surface.

Personnel Landings

§ 149.693 What are the requirements for personnel landings on manned deepwater ports?

(a) On manned deepwater ports, sufficient personnel landings must be provided to assure safe access and egress.

(b) The personnel landings must be provided with satisfactory illumination. The minimum is one foot candle of artificial illumination as measured at the landing floor and guards and rails.

Guardrails and Similar Devices

§ 149.694 What are the requirements for catwalks, floors, and openings?

(a) The configuration and installation of catwalks, floors, and openings must comply with 143.110 of this chapter.

(b) This section does not apply to catwalks, floor or deck areas, and openings:

(1) In areas not normally occupied by personnel; or

(2) On helicopter landing decks.

§ 149.695 What are the requirements for stairways?

Stairways must have at least two courses of rails. The top course must serve as a handrail and be at least 34 inches above the tread.

§ 149.696 What are the requirements for a helicopter landing deck safety net?

A helicopter landing deck safety net must comply with 46 CFR 108.235.

Noise Limits

§ 149.697 What are the requirements for a noise level survey?

(a) A survey to determine the maximum noise level during normal operations must be conducted in each accommodation space, working space, or other space routinely used by personnel. The recognized methodology used to conduct the survey must be specified in the survey results. Survey results must be kept on the deepwater port or, for an unmanned deepwater port, in the owner's principal office.

(b) The noise level must be measured over 12 hours to derive a time-weighted-average (TWA) using a sound level meter and an A-weighted filter or equivalent device.

(c) If the noise level throughout a space is determined to exceed 85 db(A), then signs must be posted with the legend: ''NOISE HAZARD—HEARING PROTECTORS REQUIRED.'' Signs must be posted at eye level—at each entrance to the space.

(d) If the noise level is determined to exceed 85 db(A) only in a portion of a space, the sign described in paragraph (c) of this section must be posted within that portion in a location visible from each direction of access.

(e) Working spaces and other areas routinely used by personnel, other than accommodation spaces, must be designed to limit the noise level in those areas so that personnel wearing hearing protectors may hear warning and emergency alarms. If this is not practicable and warning and emergency alarms cannot be heard, visual alarms in addition to the audible alarms must be installed.

Portable Lights

§ 149.700 What kind of portable lights may be used on a deepwater port?

Each portable light and its supply cord on a deepwater port must be designed for the environment where it is used.

PART 150—DEEPWATER PORTS: OPERATIONS

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Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1(70), (73), (75), (80).

Subpart A—General

§ 150.1 What does this part do?

This part provides requirements for the operation of deepwater ports.

§ 150.5 Definitions.

See § 148.5 of this chapter for the definition of certain terms used in this part.

§ 150.10 What are the general requirements for operations manuals?

(a) Each deepwater port must have an operations manual that addresses policies and procedures for normal and emergency operations conducted at the port. The operations manual must, at a minimum, include the requirements outlined in § 150.15.

(b) The operations manual is reviewed and approved by the Commandant (G–M), who may consult with the local OCMI, as meeting the requirements of the Act and this subchapter. The original manual is approved as part of the application process in part 148 of this chapter.

(c) The OCMI may approve subsequent changes to the operations manual, provided Commandant (G–M) is notified and consulted regarding any significant modifications.

(d) The manual must be readily available on the deepwater port for use by personnel.

(e) The licensee must ensure that all personnel are trained and follow the procedures in the manual while at the deepwater port.

§ 150.15 What must the operations manual include?

The operations manual required by § 150.10 must identify the deepwater port and include the information required in this section.

(a) *General information.* A description of the geographic location of the deepwater port.

(b) A physical description of the port.

(c) Engineering and construction information, including all defined codes and standards used for the port structure and systems. The operator must also include schematics of all applicable systems. Schematics must show the location of valves, gauges, system working pressure, relief settings, monitoring systems, and other pertinent information.

(d) *Communications system.* A description of a comprehensive communications plan, including:

(1) Dedicated frequencies;

(2) Communication alerts/notices between deepwater port and arriving and departing vessels; and

(3) Mandatory time intervals (communication schedules) for maintaining a live radio watch and monitoring frequencies for communication with vessels and aircraft.

(e) *Facility plan.* A plan of the layout of the mooring areas, aids to navigation, cargo transfer locations, and control stations.

(f) The hours of operation.

(g) The size, type, number, and simultaneous operations of tankers that the port can handle.

(h) Calculations, with supporting data or other documentation, to show that the charted water depth at each proposed mooring location is sufficient to provide at least a net under-keel clearance of 5 feet, at the mean low water condition.

(i) *Tanker navigation procedures.* The procedures for the navigation of tankers, including the information required in paragraphs (i)(1) through (i)(9) of this section.

(1) The operating limits, maneuvering capability, draft, net under-keel clearance, tonnage and dimensions (*i.e.*, length, width and breadth) of the tanker to be accommodated at each designated mooring.

(2) The speed limits proposed for tankers in the safety zone and navigation area to be avoided around the port.

(3) Any special navigation or communication equipment that may be required for operating in the safety zone and area to be avoided.

(4) The measures for routing vessels, including a description of the radar navigation system to be used in operation of the deepwater port:

(i) Type of radar;

(ii) Characteristics of the radar;

(iii) Antenna location;

(iv) Procedures for surveillance of vessels approaching, departing, and transiting the safety zone and navigation area to be avoided;

(v) Advisories to each tanker underway in the safety zone regarding the vessel's position, port conditions, and status of adjacent vessel traffic;

(vi) Notices that must be made, as outlined in § 150.325, by the tanker master regarding the vessel's characteristics and status; and

(vii) Rules for navigating, mooring, and anchoring in a safety zone, area to be avoided, and anchorage area.

(5) Any mooring equipment needed to make up to the SPM.

(6) The procedures for clearing tankers, support vessels, and other vessels and aircraft during emergency and routine conditions.

(7) Weather limits for tankers, including a detailed description of the manner of forecasting the wind, wave, and current conditions for:

(i) Shutdown of cargo transfer operations;

(ii) Departure of the tanker from the mooring;

(iii) Prohibition on mooring at the DWP or SPM; and

(iv) Shutdown of all port operations and evacuation of the port.

(8) Any special illumination requirements for vessel arrival, discharge, and departure operations.

(9) Any special watch standing requirements for vessel transiting, mooring, or while at anchor.

(j) *Personnel.* The duties, title, qualifications, and training of all port personnel responsible for managing and carrying out the following port activities and functions:

(1) Vessel traffic management;

(2) Cargo transfer operations;

(3) Safety and fire-protection;

(4) Maintenance and repair operations;

(5) Emergency procedures; and

(6) Port security.

(k) The personnel assigned to supervisory positions must be designated, in writing, by the licensee

and have the appropriate experience and training to satisfactorily perform their duties. Commandant (G–M) will review and approve the qualifications for all proposed supervisory positions.

(l) *Cargo transfer procedures.* The procedures for transferring cargo must comply with the applicable requirements of parts 154 and 156 for oil and subpart B to part 127 for natural gas, respectively, of this chapter including the requirements specified in paragraphs (l)(1) through (l)(10) of this section.

(1) The requirements for oil transfers in accordance with subpart A to part 156 of this chapter regarding:

(i) Pre-transfer conference;

(ii) Inspection of transfer site and equipment (*i.e.*, hoses, connectors, closure devices, monitoring devices, and containment);

(iii) Connecting and disconnecting of transfer equipment, including to a floating hose string for a single-point mooring;

(iv) Preparation of the Declaration of Inspection (DOI); and

(v) Supervision by a Person in Charge (PIC).

(2) The requirements for natural gas transfers in accordance with subpart B to part 127 of this chapter regarding:

(i) Pre-transfer conference;

(ii) Inspection of transfer site and equipment (*i.e.*, hoses, connectors, closure devices, leak monitoring devices, and containment);

(iii) Connecting and disconnecting of transfer equipment, including to a floating hose string for a SPM;

(iv) Purging of line to test for leaks and in preparation for cool down or heat up phases as appropriate;

(v) Preparation of the Declaration of Inspection (DOI); and

(vi) Supervision by a port PIC.

(3) The shipping name of, and Material Safety Data Sheet on, the product(s) transferred.

(4) The duties, title, qualifications, and training of personnel of the port designated as the PIC and responsible for managing cargo transfers (including ballasting operations if applicable to the port), in accordance with subpart D of part 154 for oil and subpart B (Operations) of part 127 for natural gas, respectively of this chapter.

(5) Minimum requirements for watch personnel onboard the vessel during transfer operations (*i.e.*, personnel necessary for checking mooring gear, monitoring communications and having propulsion/steering on standby).

(6) The start-up and completion of pumping.

(7) Emergency shutdown.

(8) The maximum relief valve settings, the maximum available working pressure and hydraulic shock to the system without relief valves, or both.

(9) Equipment necessary to discharge cargo to the port complex without harm to the environment or to persons involved in the cargo transfer, including piping, adapters, bolted flanges and quick disconnect coupling.

(10) Describing the method to be used to water and de-water the SPM hoses when required.

(m) Unusual arrangements that may be applicable, including:

(1) A list and description of any extraordinary equipment or assistance available to vessels with inadequate pumping capacity, small cargoes, small diameter piping, or inadequate crane capacity; and

(2) A description of special storage or delivery arrangements for unusual cargoes (*i.e.*, cool down requirements for transfer system components prior to transfer of LNG).

(n) *Maintenance procedures.* A maintenance program to document service and repair of:

(1) Cargo transfer equipment;

(2) Firefighting and Fire protection equipment;

(3) Safety equipment; and

(4) Cranes.

(o) *Occupational health and safety training procedures.* Policy and procedures to address occupational health and safety requirements outlined in §§ 150.600 to 150.632 of this subpart, including:

(1) Employee training in safety and hazard awareness and proper use of personnel protective equipment;

(2) Physical safety measures in the workplace (*i.e.*, housekeeping and illumination of walking and working areas);

(3) Fall arrest;

(4) Personnel transfer nets;

(5) Hazard communication (Right to Know);

(6) Permissible exposure limits (PEL);

(7) Machine guarding;

(8) Electrical safety;

(9) Lockout/Tagout;

(10) Crane safety;

(11) Sling usage;

(12) Hearing conservation;

(13) Hot work;

(14) Warning signs;

(15) Confined space safety; and

(16) Initial and periodic training and certification will be documented for each port employee and for visitors where appropriate (*e.g.*, safety orientation training).

(p) *Emergency procedures.* Emergency internal and external notification procedures:

(1) Names and numbers of key port personnel; and

(2) Names and numbers of law enforcement and response agencies.

(q) Quantity, type, location, and use of safety and fire-protection equipment, including fire plan.

(r) Aerial operations (helicopter landing pad procedures).

(s) Port response procedures for:

(1) Fire;

(2) Reportable product spill;

(3) Personnel injury (including confined space rescue); and

(4) Terrorist activity (see Port Security Plan).

(t) Designation of and assignment of port personnel to response teams for specific contingencies.

(u) Individual and team training for incident response (in accordance with 46 CFR 109.213) as specified in paragraphs (u)(1) through (u)(3) of this section.

(1) Care and use of equipment.

(2) Emergency drills and response:

(i) Types;

(ii) Frequency (at least annually); and

(iii) Documentation (records, reports and dissemination of ''lessons learned'').

(3) Documentation of minimum training requirements for response team members:

(i) Marine firefighting training;

(ii) First Aid/CPR;

(iii) Water survival;

(iv) Spill response and clean-up;

(v) Identification of at least one employee trained and certified at the level of an Emergency Medical Technician-Basic; and

(vi) Identification of at least two employees trained and certified as offshore competent persons in prevention of inadvertent entry into hazardous confined spaces.

(v) *Deepwater port security procedures.* A deepwater port security plan that addresses security issues, including, but not limited to:

(1) Controlling access of personnel and the introduction of goods and material into the port;

(2) Monitoring and alerting vessels that approach or enter the port's security zone;

(3) Identifying risks and procedures for increasing the probability of detecting and deterring terrorist or subversive activity (such as using security lighting and designating restricted areas within the port and remotely alarming them, as appropriate);

(4) Notification requirements (both internally and externally) and response requirements in the event of a perceived threat or an attack on the port;

(5) Designating the Port Security Officer, providing positive and

verifiable identification of personnel with access to the port;

(6) The training (including drills) required for all personnel regarding security issues; and

(7) The scalability of actions and procedures for the various levels of threat. Deepwater port operators should ensure that security plans address or are comparable to the key security plan elements provided in 33 CFR part 106.

(w) Procedures for any special operations, including:

(1) Evacuation and re-manning procedures;

(2) Refueling operations;

(3) Diving operations;

(4) Support vessel operations; and

(5) Providing logistical services.

(x) Recordkeeping of maintenance procedures, tests, and emergency drills outlined elsewhere in the operations manual.

(y) *Environmental monitoring procedures.* A program for monitoring the environmental effects of the port and its operations in order to maintain compliance with the environmental conditions in the license and applicable environmental laws.

(1) Routine periodic re-examination of the physical, chemical, and biological factors contained in the port's environmental impact analysis and baseline study submitted with the license application. The examination process must include water and air monitoring in accordance with appropriate Federal and State statutes.

(2) A more detailed study may be required in the wake of an event such as an inadvertent release.

§ 150.20 How many copies of the operations manual must be given to the Coast Guard?

The draft operations manual will be included as part of the application submission. After a license has been issued and approval of the final operations manual is granted, the licensee must give the Commandant (G–M) at least five copies and five copies of each subsequent amendment to the manual.

§ 150.25 Amending the operations manual.

(a) Whenever the cognizant COTP finds that the operations manual does not meet the requirements of this part, the COTP notifies the licensee, in writing, of the inadequacies in the manual.

(b) Within 45 days after the notice under paragraph (a) of this section is sent, the licensee must submit written proposed amendments to eliminate the inadequacies.

(c) The cognizant COTP reviews the amendments and makes a determination as to the adequacy of the amendments and notifies the licensee of the determination.

(d) If the COTP decides that an amendment is necessary, the amendment goes into effect 60 days after the COTP notifies the licensee of the amendment.

(e) The licensee may petition the Commandant (G–M), via the appropriate district office, to review the decision of the COTP. In this case, the effective date of the amendment is delayed pending the Commandant's decision. Petitions must be made (in writing) and presented to the COTP for forwarding to the Commandant (G–M).

(f) If the COTP finds that a particular situation requires immediate action to prevent a spill or discharge, or to protect the safety of life and property, the COTP may issue an amendment effective on the date that the licensee receives it. The COTP must include a brief statement of the reasons for the immediate amendment. The licensee may petition the District Commander for review, but the petition does not delay the effective date of the amendment.

§ 150.30 Proposing an amendment to the operations manual.

(a) The licensee may propose an amendment to the operations manual:

(1) By submitting (in writing) the amendment and reasons for the amendments to the COTP not less than 30 days before the requested effective date of the amendment; or

(2) If the amendment is needed immediately, by submitting the amendment, and reasons why the amendment is needed immediately, to the COTP in writing.

(b) The COTP responds to a proposed amendment by notifying the licensee, in writing, before the requested date of the amendment whether the request is approved. If the request is disapproved, the COTP includes the reasons for disapproval in the notice. If the request is for an immediate amendment, the COTP responds as soon as possible.

§ 150.35 How may an adjacent coastal State request an amendment to the operations manual?

(a) An adjacent coastal State connected by pipeline to the deepwater port may petition the cognizant COTP to amend the operations manual. The petition must include sufficient information to allow the COTP to reach a decision concerning the proposed amendment.

(b) After the COTP receives a petition, the COTP requests comments from the licensee.

(c) After reviewing the petition and comments, and considering the costs and benefits involved, the COTP may approve the petition if the proposed amendment will provide equivalent or improved protection and safety. The adjacent coastal State may petition the Commandant (G–M) to review the decision of the COTP. Petitions must be made in writing and presented to the COTP for forwarding to the Commandant (G–M) via the District Commander.

§ 150.40 Deviating from the operations manual.

If, because of a particular situation, the licensee needs to deviate from the operations manual, the licensee must submit a written request to the COTP explaining why the deviation is necessary and what alternative is proposed. If the COTP determines that the deviation would ensure equivalent or greater protection and safety, the COTP authorizes the deviation and notifies the licensee in writing.

§ 150.45 Emergency deviation from this subchapter or the operations manual.

In an emergency, any person may deviate from any requirement in this subchapter, or any procedure in the operations manual, to ensure the safety of life, property, or the environment. Each deviation must be reported to the COTP at the earliest possible time.

§ 150.50 What are the requirements for a facility spill response plan?

(a) Each deepwater port, which meets the applicability requirements of part 154, subpart F, of this chapter must have a Facility Response Plan and be approved by the COTP.

(b) Each natural gas deepwater port must have a natural gas facility emergency plan that meets part 127, subpart B of this chapter.

(c) The response plan must be submitted to the COTP, in writing, not less than 60 days before the deepwater port begins operation.

Subpart B—Inspections

§ 150.100 What are the requirements for inspecting deepwater ports?

Under the direction of the OCMI, marine inspectors may inspect deepwater ports to determine whether the requirements of this subchapter are met. A marine inspector may conduct an inspection, with or without advance notice, at any time the COTP deems necessary, and may coincide with receipt of the annual self-inspection report from the operator to ensure stated conditions are accurate.

§ 150.105 What are the requirements for annual self-inspection?

(a) The owner or operator of each manned deepwater port must ensure that the port is inspected, at intervals of no more than 12 months, to determine whether the facility is in compliance with the requirements of this subchapter. The inspection may be conducted within 2 months after the date the inspection is due. However, the inspection is credited as of 12 months after the previous due date.

(b) The owner or operator must record and submit the results of the annual self-inspection to the COTP within 30 days after completion of the inspection. The report must include a description of any failure and scope of repairs made to components or equipment, in accordance with the requirements in Subpart I to this part, other than the primary lifesaving or firefighting or transfer equipment.

§ 150.110 What are the notification requirements upon receipt of classification society certifications?

The licensee must notify the COTP, in writing, upon receipt of a classification society certification, interim class certificate, or SPM classification certificate.

Subpart C—Personnel

§ 150.200 Who must ensure that port personnel are qualified?

The licensee must ensure that the individual filling a position meets the qualifications for that position as outlined in the operations manual.

§ 150.205 What are the language requirements for port personnel?

Only persons who read, write, and speak English may occupy the essential management positions outlined in the operations manual.

§ 150.210 What are the restrictions on serving in more than one position?

No person may serve in more than one of the essential management positions outlined in the operations manual at any one time.

§ 150.225 What training and instruction are required?

Personnel must receive training and instruction commensurate with the position they hold. Procedures for documenting employee training must be outlined in the operations manual.

Subpart D—Vessel Navigation

§ 150.300 What does this subpart do?

This subpart supplements the international navigation rules in subchapter D of this chapter, and prescribes requirements that:

(a) Apply to the navigation of all vessels at or near a deepwater port; and

(b) Apply to all vessels while in a safety zone, area to be avoided, or no anchoring area.

§ 150.305 How does this subpart apply to unmanned deepwater ports?

The master of any tanker calling at an unmanned deepwater port is responsible for the safe navigation of the vessel to and from the port and for the required notifications in § 150.325. Once the tanker is connected to the unmanned deepwater port, the master must maintain radar surveillance in compliance with the requirements of § 150.310.

§ 150.310 When is radar surveillance required?

A manned deepwater port's person in charge of vessel operations must maintain radar surveillance of the safety zone or area to be avoided when:

(a) A tanker is proceeding to the safety zone after submitting the report required in § 150.325;

(b) A tanker or support vessel is underway in the safety zone or area to be avoided;

(c) A vessel other than a tanker or support vessel is about to enter or is underway in the safety zone or area to be avoided; or

(d) As described in the port security plan.

§ 150.320 What advisories are given to tankers?

A manned deepwater port's person in charge of vessel operations must advise the master of each tanker underway in the safety zone or area to be avoided of the following:

(a) At intervals not exceeding 10 minutes, the vessel's position by range and bearing from the pumping platform complex; and

(b) The position and the estimated course and speed, if moving, of all other vessels that may interfere with the movement of the tanker within the safety zone or area to be avoided.

§ 150.325 What is the first notice required before a tanker enters the safety zone or area to be avoided?

(a) The owner, master, agent, or person in charge of a tanker bound for a manned deepwater port must comply with the notice of arrival (NOA) requirements in subpart C of part 160 of this chapter. The NOA will be submitted to the National Vessel Movement Center (NVMC) that was established in October 2001 to track arrival information from vessels entering U.S. waters.

(b) The owner, master, agent, or person in charge of a tanker bound for a manned deepwater port must report the pertinent information required in § 150.15(i)(4)(vi) for the vessel including:

(1) The name, gross tonnage, and draft of the tanker;

(2) The type and amount of cargo in the tanker;

(3) The location of the tanker at the time of the report;

(4) Any conditions on the tanker that may impair its navigation, such as fire or malfunctioning propulsion, steering, navigational, or radiotelephone equipment. The testing requirements in § 164.25 of this chapter are applicable to vessels arriving at a deepwater port;

(5) Any leaks, structural damage, or machinery malfunctions that may impair cargo transfer operations or cause a product discharge; and

(6) The operational condition of the equipment listed under § 164.35 of this chapter on the tanker.

(c) If the estimated time of arrival changes by more than 6 hours from the last reported time, the NVMC and the port's person in charge of vessel operations must be notified of the correction as soon as the change is known.

(d) If the information reported in paragraphs (b)(4) or (b)(5) of this section changes at any time before the tanker enters the safety zone or area to be avoided at the deepwater port, or while the tanker is in the safety zone or area to be avoided, the master of the tanker must report the changes to the NVMC and port's person in charge of vessel operations as soon as possible.

§ 150.330 What is the second notice required before a tanker enters the safety zone or area to be avoided?

When a tanker bound for a manned deepwater port is 20 miles from entering the port's safety zone or area to be avoided, the master of the tanker must notify the port's person in charge of vessel operations of the tanker's name and location.

§ 150.340 What are the rules of navigation for tankers in the safety zone or area to be avoided?

(a) A tanker must enter or depart the port's safety zone or area to be avoided in accordance with the navigation procedures in the port's approved operations manual as described in § 150.15(i).

(b) A tanker must not anchor in the safety zone or area to be avoided, except in a designated anchorage area.

(c) A tanker may not enter a safety zone or area to be avoided in which

another tanker is present, unless it has been cleared by the person in charge of the port and no other tankers are underway.

(d) A tanker must not operate, anchor, or moor in any area of the safety zone or area to be avoided in which the net under-keel clearance would be less than 5 feet.

§ 150.345 How are support vessels cleared to move within the safety zone or area to be avoided?

All movements of support vessels within a manned deepwater port's safety zone or area to be avoided must be cleared in advance by the port's person in charge of vessel operations.

§ 150.350 What are the rules of navigation for support vessels in the safety zone or area to be avoided?

A support vessel must not anchor in the safety zone or area to be avoided, except:

(a) In an anchorage area; or

(b) For vessel maintenance, which, in the case of a manned deepwater port, must be cleared by the port's person in charge of vessel operations.

§ 150.355 How are other vessels cleared to move within the safety zone?

(a) Clearance by a manned deepwater port's person in charge of vessel operations is required before a vessel, other than a tanker or support vessel, enters the safety zone.

(b) The port's person in charge of vessel operations may clear a vessel under paragraph (a) of this section only if its entry into the safety zone would not:

(1) Interfere with the purpose of the deepwater port;

(2) Endanger the safety of life or property or the environment; or

(3) Be prohibited by regulation.

(c) At an unmanned deepwater port, such as a submerged turret landing (STL) system, paragraphs (a) and (b) of this section would apply once a tanker connects to the STL buoy.

§ 150.380 Under what circumstances may vessels operate within the safety zone or area to be avoided?

(a) Table 150.380(a) of this section lists the areas within a safety zone and area to be avoided where a vessel may operate and the clearance needed for that location.

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TABLE 150.380(a)—REGULATED ACTIVITIES OF VESSELS AT DEEPWATER PORTS

Regulated Activities	Area to be avoided		
	Safety Zone around each platform pumping complex and SPM[1]	Anchorage areas	No anchorage areas within safety zone and area to be avoided
Tankers calling at port	C	C	C
Support vessel movements	C	C	C
Transit by vessels other than tankers or support vessels	N	P	P
Mooring to SPM by vessels other than tankers or support vessels	F	.....	
Anchoring by vessels other than tankers or support vessels	N	F	N
Fishing, including bottom trawl (shrimping)	N	P	N
Mobile drilling operations or erection of structures[2]	N	N	N
Lightering/transshipment[3]	N	N	N

Notes--

[1]Areas to be avoided are in subpart J of this part.

[2]Not part of Port Installation.

[3]Exception, 33 CFR 150.440(e).

Key to regulated activities: F--Only in an emergency. N--Not permitted. C--Movement of the vessel is permitted when cleared by the port's person in charge, vessel operations. P--Transit is permitted when the vessel is not in the immediate area of a tanker and when cleared by the person in charge, vessel operations. Communication with the port's person in charge, vessel operations is required. For transiting foreign-flag vessels, the requirement for clearance to navigate in the area to be avoided is mandatory.

BILLING CODE 4910–15–C

(b) If the activity is not listed in table 150.380(a) of this section, or is not otherwise provided for in this subpart, the COTP's permission is required first.

§ 150.385 What is required in an emergency?

In an emergency, for the protection of life or property, a vessel may deviate from a vessel movement requirement in this subpart without clearance from a manned deepwater port's person in charge of vessel operations if the master advises the port PIC of the reasons for the deviation at the earliest possible moment.

Subpart E—Cargo Transfer Operations

§ 150.400 What does this subpart do?

This subpart prescribes rules that apply to the transfer of oil or natural gas at a deepwater port.

§ 150.405 How must a Cargo Transfer System (CTS) be tested and inspected?

(a) No person may transfer oil or natural gas through a CTS at a deepwater port unless it has been inspected and tested according to this section.

(b) The SPM–CTS must be maintained as required by the design standards used to comply with § 149.650 of this chapter.

(c) If the manufacturer's maximum pressure rating for any cargo transfer hose in a SPM–CTS has been exceeded (unless it was exceeded for testing required by this section), the hose must be:

(1) Removed;

(2) Hydrostatically tested to 1.5 times its maximum working pressure for oil or 1.1 times its maximum working pressure for natural gas; and

(3) Visually examined externally and internally for evidence of:

(i) Leakage;

(ii) Loose covers;

(iii) Kinks;

(iv) Bulges;

(v) Soft spots; and

(vi) Gouges, cuts, or slashes that penetrate the hose reinforcement.

(d) Each submarine hose used in cargo transfer operations in a SPM–CTS must have been removed from its coupling, surfaced, and examined as described in paragraphs (c)(2) and (c)(3) of this section within the preceding 2 years for oil or 15 months for natural gas; and

(e) Before resuming cargo transfer operations, each submarine hose in a SPM–CTS must be visually examined in place as described in paragraph (c)(3) of this section after cargo transfer operations are shut down due to sea conditions at the deepwater port.

§ 150.420 What actions must be taken when cargo transfer equipment is defective?

When any piece of equipment involved in cargo transfer operations (oil or natural gas) is defective:

(a) The piece of equipment must be replaced or repaired before making any further cargo transfers; and

(b) The repaired or replaced piece must meet or exceed its original specifications. Repairs must be conducted in accordance with the port-specific maintenance program outlined in the operations manual, and that program must provide for the repair of natural gas transfer hoses in accordance with § 127.405 of this chapter.

§ 150.425 What are the requirements for transferring cargo?

Cargo transfer procedures must be outlined in the port operations manual and must provide:

(a) Oil transfer procedures that accord with § 156.120 of this chapter; and

(b) Natural gas transfer procedures that accord with §§ 127.315, 127.317 and 127.319 of this chapter.

§ 150.430 What are the requirements for a declaration of inspection?

(a) No person may transfer cargo from a tanker to a manned deepwater port unless a declaration of inspection complying with § 156.150(c) (for oil) or § 127.317 (for natural gas) of this chapter has been filled out and signed by the vessel's officer in charge of cargo transfer and the person in charge of cargo transfer for the deepwater port.

(b) Before signing a declaration of inspection, the vessel's officer in charge of cargo transfer must inspect the tanker; the person in charge of cargo transfer for the deepwater port must inspect the deepwater port. They must indicate, by initialing each item on the declaration of inspection form, that the tanker and deepwater port comply with § 156.150 (for oil) or § 127.317 (for natural gas) of this chapter.

§ 150.435 When are cargo transfers not allowed?

No person may transfer cargo at a deepwater port:

(a) When the person in charge of cargo transfer is not on duty at the port;

(b) During an electrical storm in the port's vicinity;

(c) During a fire at the port, at the onshore receiving terminal, or aboard a vessel berthed at the port, unless the person in charge of cargo transfer determines that a cargo transfer should be resumed as a safety measure;

(d) When a leak develops of a sufficient quantity for product to accumulate in the cargo containment underneath the manifold or piping;

(e) When there are not enough personnel and equipment at the port dedicated to contain and remove the discharges or perform the emergency response functions as required in the port's response plan under part 154 (for oil), or emergency plan under part 127 (for natural gas) of this chapter;

(f) Whenever the emergency shutdown system should have activated but failed to do;

(g) By lighterage, except in bunkering operations, unless otherwise authorized by the COTP;

(h) When the weather at the port does not meet the minimum operating conditions for cargo transfers as defined in the port's operations manual; or

(i) When prescribed by the Port Security Plan under heightened security conditions at the port or its adjacent areas, or on vessels calling on or serving the port.

§ 150.440 How may the COTP order suspension of cargo transfers?

(a) In case of emergency, the COTP may order the suspension of cargo transfers at a port to prevent the discharge, or threat of discharge, of oil or natural gas or to protect the safety of life and property.

(b) An order of suspension may be made effective immediately.

(c) The order of suspension must state the reasons for the suspension.

(d) The licensee may petition the District Commander, in writing, or by any means if the suspension is effective immediately, to reconsider the order of suspension. The decision of the District Commander is considered final agency action.

§ 150.445 When is oil in an SPM–OTS displaced with water?

(a) The Port Superintendent must ensure that the oil in an SPM–OTS is displaced with water and that the valve at the pipeline end manifold is closed whenever:

(1) A storm warning is received forecasting weather conditions that will exceed the design operating criteria listed in the operations manual for the SPM–OTS;

(2) A vessel is about to depart the SPM because of storm conditions; or

(3) The SPM is not scheduled for use in an oil transfer operation within the next 7 days.

(b) The Port Engineer will not be required to perform this requirement, provided it can be demonstrated to the OCMI, that a satisfactory alternative means of safely securing all cargo transfer hoses can be implemented in the event of severe weather conditions.

Subpart F—Emergency and Specialty Equipment

§ 150.500 What does this subpart do?

This subpart concerns requirements for maintenance, repair, and operational testing of emergency and specialty equipment at a deepwater port.

Maintenance and Repair

§ 150.501 How must emergency equipment be maintained and repaired?

All lifesaving, firefighting, and other emergency equipment at a deepwater port, including additional equipment not required to be onboard the deepwater port, must be maintained in good working order and repaired according to the port's planned maintenance program and the requirements outlined in this subpart.

Lifesaving Equipment (General)

§ 150.502 What are the maintenance and repair requirements for lifesaving equipment?

(a) Each deepwater port must have onboard, or in the operator's principal office in the case of an unmanned port, the manufacturer's instructions for performing onboard maintenance and repair of the port's lifesaving equipment. The instructions must include the following for each item of equipment, as applicable:

(1) Instructions for maintenance and repair;

(2) A checklist for use when carrying out the monthly inspections required under § 150.513;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of sources of spare parts; and

(7) A log for records of inspections and maintenance.

(b) In lieu of the manufacturer's instructions required under paragraph (a) of this section, the deepwater port may have its own onboard planned maintenance program for maintenance and repair that is equivalent to the procedures recommended by the equipment manufacturer.

(c) The deepwater port must have designated a person in charge of ensuring that maintenance and repair is carried out in accordance with the instructions required in paragraph (a) of this section.

(d) If deficiencies in the maintenance or condition of lifesaving equipment are identified, the OCMI may review the instructions under paragraph (a) of this section and require appropriate changes to the instructions or operations to provide for adequate maintenance and readiness of the equipment.

(e) When lifeboats, rescue boats, and liferafts are not fully operational because of ongoing maintenance or repairs, there must be a sufficient number of fully operational lifeboats and liferafts available for use to accommodate all persons on the deepwater port.

(f) Except in an emergency, repairs or alterations affecting the performance of lifesaving equipment must not be made without notifying the OCMI in advance. The person in charge must report emergency repairs or alterations to lifesaving equipment to the OCMI, as soon as practicable.

(g) The person in charge must ensure that spare parts and repair equipment are provided for each lifesaving appliance and component subject to excessive wear or consumption.

Launching Appliances

§ 150.503 What are the time interval requirements for maintenance on survival craft falls?

(a) Each fall used in a launching device for survival craft or rescue boats must be turned end-for-end at intervals of not more than 30 months.

(b) Each fall must be replaced by a new fall when deteriorated or at intervals of not more than 5 years, whichever is earlier.

(c) A fall that cannot be turned end-for-end under paragraph (a) of this section must be carefully inspected between 24 and 30 months after its installation. If the inspection shows that the fall is faultless, the fall may be continued in service up to 4 years after its installation. It must be replaced by a new fall 4 years after installation.

§ 150.504 When must the operator service and examine lifeboat and rescue boat launching appliances?

(a) The operator must service launching appliances for lifeboats and rescue boats at intervals recommended in the manufacturer's instructions under § 150.502(a), or deepwater port's planned maintenance program under § 150.502(b).

(b) The operator must thoroughly examine launching appliances for lifeboats and rescue boats at intervals not to exceed 5 years. Upon completion of the examination, the operator must subject the winch brakes of the launching appliance to a dynamic test.

§ 150.505 When must the operator service and examine lifeboat and rescue boat release gear?

(a) The operator must service lifeboat and rescue boat release gear at intervals recommended in the manufacturer's instructions under § 150.502(a), or deepwater port's planned maintenance program under § 150.502(b).

(b) The operator must subject lifeboat and rescue boat release gear to a thorough examination at each inspection for certification by personnel trained in examining the gear.

Inflatable Lifesaving Appliances

§ 150.506 When must the operator service inflatable lifesaving appliances and marine evacuation systems?

(a) The operator must service each inflatable lifejacket, hybrid inflatable lifejacket, and marine evacuation system at intervals of 1-year after its initial packing. The operator may delay the servicing up to 5 months to meet the next scheduled inspection of the deepwater port.

(b) The operator must service each inflatable liferaft no later than the month and year on its servicing sticker under 46 CFR 160.151–57(m)(3)(ii), except that the operator may delay servicing up to 5 months to meet the next scheduled inspection of the deepwater port. The operator must also service each inflatable liferaft:

(1) Whenever the container of the raft is damaged; or

(2) Whenever the container straps or seals are broken.

§ 150.507 How must the operator service inflatable lifesaving appliances?

(a) The operator must service each inflatable life raft according to 46 CFR part 160, subpart 160.151.

(b) The operator must service each inflatable lifejacket according to 46 CFR part 160, subpart 160.176.

(c) The operator must service each hybrid inflatable lifejacket according to the owner's manual and the procedures in 46 CFR part 160, subpart 160.077.

§ 150.508 What are the maintenance and repair requirements for inflatable rescue boats?

The operator must perform the maintenance and repair of inflatable rescue boats according to the manufacturer's instructions.

Operational Tests and Inspections (General)

§ 150.509 How must emergency equipment be tested and inspected?

All lifesaving, firefighting, and other emergency equipment at a deepwater port must be tested and inspected per this subpart.

§ 150.510 How must emergency equipment being tested be operated?

The equipment must be operated under the operating instructions of the

equipment's manufacturer when tests or inspections include operational testing of emergency equipment.

§ 150.511 What are the operational testing requirements for lifeboat and rescue boat release gear?

(a) Lifeboat and rescue boat release gear must be operationally tested under a load of 1.1 times the total mass of the lifeboat or rescue boat when loaded with its full complement of persons and equipment.

(b) The test must be conducted whenever the lifeboat, rescue boat, or their release gear is overhauled or at least once every 5 years.

(c) The OCMI may consider alternate operational test procedures to those under paragraph (a) of this section.

Frequency of Tests and Inspections

§ 150.512 What are the weekly tests and inspections?

The required weekly tests and inspections of lifesaving equipment are as follows:

(a) The operator must visually inspect each survival craft, rescue boat, and launching device to ensure its readiness for use;

(b) The operator must test the general alarm system; and

(c) The operator must test for readiness of the engine, starting device, and communications equipment of each lifeboat and rescue boat according to the manufacturer's instructions.

§ 150.513 What are the monthly tests and inspections?

(a) The operator must inspect monthly each item of lifesaving equipment under § 150.502(b) to this subpart, to ensure that the equipment is complete and in good order. The operator must keep on the deepwater port (or in the operator's principal office, in the case of an unmanned deepwater port) a report of the inspection that includes a statement as to the condition of the equipment, and make the report available for review by the Coast Guard.

(b) The operator must test monthly each Emergency Position Indicating Radio Beacon (EPIRB) and each Search and Rescue Transponder (SART), other than an EPIRB or SART in an inflatable liferaft. The operator must test the EPIRB using the integrated test circuit and output indicator to determine whether the EPIRB is operational.

§ 150.514 What are the annual tests and inspections?

At least annually the operator must:

(a) Strip, clean, thoroughly inspect, and, if needed, repair each lifeboat, rescue boat, and liferaft. At that time, the operator must empty, clean, and refill with fresh fuel each fuel tank;

(b) Thoroughly inspect and, if needed, repair each davit, winch, fall, and other launching device;

(c) Check each item of lifesaving equipment and replace any item that is marked with an expiration date that has passed;

(d) Check each battery used in an item of lifesaving equipment and replace any battery that is marked with an expiration date that has passed; and

(e) Replace any battery that is not marked with an expiration date if that battery is used in an item of lifesaving equipment, except for a storage battery used in a lifeboat or rescue boat.

(f) The requirements in this section do not relieve the person in charge of the requirement to keep the equipment ready for immediate use.

Weight-Testing

§ 150.515 What are the requirements for weight-testing of newly installed or relocated craft?

(a) The operator must perform installation weight-testing according to 46 CFR 199.45(a)(1) on each new lifeboat, rescue boat, and davit-launched liferaft system.

(b) The operator must conduct installation weight-tests, according to paragraph (a) of this section, when survival crafts are relocated to another deepwater port.

§ 150.516 What are the periodic requirements for weight-testing?

The operator must weight-test, according to 46 CFR 199.45(a)(1), each lifeboat, davit-launched liferaft, and rescue boat every time a fall is replaced or turned end-for-end.

§ 150.517 How are weight tests supervised?

(a) The installation and periodic tests required by 150.515 and 150.516 of this subpart must be supervised by a person familiar with lifeboats, davit-launched liferafts, rescue boats, and with the test procedures under those sections.

(b) The person supervising the tests must attest, in writing, that the tests have been performed according to Coast Guard regulations. The operator must keep a copy of the supervisor's attesting statement onboard the deepwater port (or in the operator's principal office, in the case of an unmanned deepwater port) and make it available to the OCMI.

Personal Safety Gear

§ 150.518 What are the inspection requirements for work vests and immersion suits?

(a) All work vests and immersion suits must be inspected by the owner or operator pursuant to § 150.105 of this part, to determine whether they are in serviceable condition.

(b) If a work vest or immersion suit is inspected and is in serviceable condition, then it may be continued in service. If not, then it must be removed from the deepwater port.

Emergency Lighting and Power Systems

§ 150.519 What are the requirements for emergency lighting and power systems?

(a) The operator must test and inspect the emergency lighting and power systems at least once each week to determine if they are in proper operating condition. If they are not in proper operating condition, then the operator must repair or replace their defective parts.

(b) The operator must test under load each emergency generator driven by an internal combustion engine that is used for an emergency lighting and power system at least once in each month for a minimum of 2 hours.

(c) The operator must test each storage battery for the emergency lighting and power systems, at least once in each 6 months, to demonstrate the ability of the batteries to supply the emergency loads for an 8-hour period. The operator must follow the manufacturer's instructions in performing the battery test to ensure the batteries are not damaged during testing.

Fire Extinguishing Equipment

§ 150.520 When must fire extinguishing equipment be tested and inspected?

The operations manual must specify how and when the operator will test and inspect each hand-portable fire extinguisher, semi-portable fire extinguisher, and fixed fire-extinguishing system. These specifications must accord with 46 CFR 31.10–18.

§ 150.521 What records are required?

(a) The operator must maintain a record of each test and inspection under § 150.520 on the deepwater port (or in the operator's principal office, in the case of an unmanned deepwater port) for at least 2 years.

(b) The record must show:

(1) The date of each test and inspection;

(2) The number or other identification of each fire extinguisher or system tested or inspected; and

(3) The name of the person who conducted the test or inspection and the name of the company that person represents.

Miscellaneous Operations

§ 150.530 What may the fire-main system be used for?

The fire-main system may be used only for firefighting and for deck washing, unless it is capable of being isolated and can provide the applicable minimum pressures required outlined in § 149.416 of this chapter.

§ 150.531 How many fire pumps must be kept ready for use at all times?

At least one of the fire pumps required by this subchapter must be kept ready for use at all times.

§ 150.532 What are the requirements for connection and stowage of fire hoses?

(a) At least one length of fire-hose, with a combination nozzle, must be connected to each fire hydrant at all times. If in a location exposed to the weather, the fire-hose may be removed from the hydrant during freezing weather.

(b) When not in use, fire-hose connected to a fire hydrant must be stowed on a hose rack.

(c) The hydrant nearest the edge of a deck must have enough lengths of fire-hose connected to it to allow 10 feet of hose, when pressurized, to curve over the edge.

§ 150.540 What are the restrictions on fueling aircraft?

If the deepwater port is not equipped with a permanent fueling facility, the COTP's approval is necessary before aircraft may be fueled at the port.

§ 150.550 What are the requirements for the muster list?

(a) A muster list must be posted on each pumping platform complex.

(b) The muster list must:

(1) List the name and title of each person, in order of succession, who is the person in charge of the pumping platform complex for purposes of supervision during an emergency;

(2) List the special duties and duty stations for each person on the pumping platform complex in the event of an emergency that requires the use of equipment covered by part 149 of this chapter; and

(3) Identify the signals for calling persons to their emergency stations and for abandoning the pumping platform complex.

§ 150.555 How must cranes be maintained?

Cranes must be operated, maintained, and tested in accordance with subpart F to 46 CFR part 109.

Subpart G—Workplace Safety and Health

§ 150.600 What does this subpart do?

This subpart concerns requirements for workplace safety and health on a deepwater port.

Safety and Health (General)

§ 150.601 What are the requirements for workplace safety and health on a deepwater port?

(a) Each operator of a deepwater port must ensure compliance, on that port, with the requirements of this subpart, and must ensure that all places of employment within the port are:

(1) Maintained in compliance with workplace safety and health regulations of this subpart; and

(2) Free from recognized hazardous conditions.

(b) Persons responsible for actual operations, including owners, operators, contractors, and subcontractors must ensure that those operations subject to their control are:

(1) Conducted in compliance with workplace safety and health regulations of this subpart; and

(2) Free from recognized hazardous conditions.

(c) The term ''recognized hazardous conditions,'' as used in this subpart, means conditions that are:

(1) Generally known among persons in the affected industry as causing, or likely to cause, death or serious physical harm to persons exposed to those conditions; and

(2) Routinely controlled in the affected industry.

§ 150.602 What occupational awareness training is required?

(a) Each deepwater port operator must ensure that all port personnel are provided with information and training on recognized hazardous conditions in their workplace, including, but not limited to, electrical, mechanical, and chemical hazards. Specific required training topics are outlined in § 150.15(u).

(b) As an alternative to compliance with the specific provisions of this subpart, an operator may provide, for workplace safety and health, the implementation of an approved, port-specific safety and environmental management program (SEMP). Operators should consult with the Commandant (G–M) in preparing a SEMP. Five copies of a proposed SEMP must be submitted to the Commandant for evaluation. The Commandant may consult with the local OCMI, and will approve the SEMP if he or she finds that the SEMP provides at least as much protection of workplace safety and health as do the specific provisions of this subpart.

§ 150.603 What emergency response training is required?

The requirements for emergency response training must be outlined in the port operations manual.

§ 150.604 Who controls access to medical monitoring and exposure records?

If medical monitoring is performed or exposure records are maintained by an employer, the owner, operator, or person in charge must establish procedures for access to these records by personnel.

§ 150.605 What are the procedures for reporting a possible workplace safety or health violation at a deepwater port?

Any person may notify the OCMI verbally or in writing of:

(a) A possible violation of a regulation in this part; or

(b) A hazardous or unsafe working condition on any deepwater port.

§ 150.606 After learning of a possible violation, what does the OCMI do?

After reviewing the information received under § 150.605 to this part and conducting any necessary investigation, the OCMI notifies the owner or operator of any deficiency or hazard and initiates enforcement measures as the circumstances warrant. The identity of any person making a report of a violation will remain confidential, except to the extent necessary for the performance of official duties or as agreed to by the person.

General Workplace Conditions

§ 150.607 What are the general safe working requirements?

(a) All equipment, including machinery, cranes, derricks, portable power tools, and most importantly safety gear must be used in a safe manner and in accordance with the manufacturer's recommended practice, unless otherwise stated in this subchapter.

(b) All machinery and equipment must be maintained in proper working order or removed.

Personal Protective Equipment

§ 150.608 Who is responsible for ensuring that personnel use or wear protective equipment and are trained in its use?

(a) Each deepwater port operator must ensure that all personnel who are required by this subpart to use or wear personal protective equipment do so when within designated work areas at the port.

(b) Each deepwater port operator must ensure that:

(1) All personnel engaged in the operation are trained in the proper use, limitations, and maintenance of the personal protective equipment specified by this subpart;

(2) The equipment is maintained and used or worn as required by this subpart; and

(3) The equipment is made available and on hand for all personnel engaged in the operation.

Eyes and Face

§ 150.609 When is eye and face protection required?

The operator must provide eye and face protectors for the use of persons engaged in or observing activities where damage to the eye is possible, such as welding, grinding, machining, chipping, handling hazardous materials, or acetylene burning or cutting. These eye and face protectors must be:

(a) Properly marked and in compliance with the requirements of 29 CFR 1910.133; and

(b) Maintained in good condition or replaced when necessary.

§ 150.610 Where must eyewash equipment be located?

Portable or fixed eyewash equipment providing emergency relief must be immediately available near any area where there is a reasonable probability that eye injury may occur.

Head

§ 150.611 What head protection is required?

The deepwater port operator must ensure that where there is a reasonable probability of injury from falling objects or contact with electrical conductors, personnel working or visiting such an area wear head protectors designed to protect them against such injury and complying with 29 CFR 1910.151.

Feet

§ 150.612 What footwear is required?

The deepwater port operator must ensure that while personnel are working in an area, or engaged in activities, where there is a reasonable probability for foot injury to occur, they wear footwear that complies with 29 CFR 1910.136, except when environmental conditions exist that present a hazard greater than that against which the footwear is designed to protect.

Noise and Hearing Protection

§ 150.613 What are the requirements for a noise monitoring and hearing protection survey?

(a) The deepwater port operator must measure noise and provide hearing protection in accordance with 29 CFR 1910.95.

(b) The initial noise survey for a deepwater port must be completed no later than January 1, 2005, or within one year of beginning operations, whichever is later.

Clothing

§ 150.614 When is protective clothing required?

The deepwater port operator must ensure that personnel exposed to flying particles, radiant energy, heavy dust, or hazardous materials wear clothing and gloves that protect against the hazard involved.

Electrical

§ 150.615 What safe practices are required?

(a) The deepwater port operator must ensure that before personnel begin work that might expose them to an electrical charge, they turn off the electricity, unless doing so is not feasible.

(b) The deepwater port operator must ensure that personnel turning off equipment pursuant to paragraph (a) of this section follow the lockout or tagging procedures specified in 29 CFR 1910.147, and in §§ 150.616 and 150.617.

(c) The deepwater port operator must ensure that, to prevent electrical shock, personnel receive training in electrical, safety-related work practices in the area of the work they perform, including the use of electrical personal protective equipment appropriate to protect against potential electrical hazards.

Lockout/Tagout

§ 150.616 What are the requirements for lockout?

The deepwater port operator must ensure that, if equipment (electrical, hydraulic, mechanical, and pneumatic) does not need to be powered during the work described in § 150.615(a), and has a lockout or other device to prevent the equipment from being turned on unintentionally, that lockout or other device is activated.

§ 150.617 What are the requirements for tagout?

(a) The deepwater port operator must ensure that, before work takes place on equipment that is disconnected from the power source, a tag complying with this section is placed at the location where the power is disconnected. The operator must ensure that, if there is a control panel for the equipment in line between the equipment and the location where the power is disconnected, a tag complying with this section is also placed on the control panel.

(b) Each tag or sign must have words stating:

(1) That equipment is being worked on;

(2) That power must not be restored or the equipment activated; and

(3) The name of the person who placed the tag.

(c) Only the person who placed the tag, that person's immediate supervisor, or the relief person of either, is authorized to remove the tag.

Respiratory Protection

§ 150.618 What are the requirements for respiratory protection?

(a) The deepwater port operator must ensure that respiratory protection measures are taken in compliance with 29 CFR 1910.134 including establishment of a formal respiratory protection program.

(b) The deepwater port operator must ensure that measures for protection from exposure to asbestos are taken in compliance with 29 CFR 1910.1001.

(c) The deepwater port operator must ensure that measures for protection from exposure to inorganic lead are taken in compliance with 29 CFR 1910.1025.

Fall Arrest

§ 150.619 What are the fall arrest system requirements?

The deepwater port operator must ensure that all personnel who are exposed to the risk of falling more than 6 feet, or who are at risk of falling any distance onto equipment with irregular surfaces, exposed moving components, electrically energized cables or connectors, or water, are protected against such a fall either by guardrails or other measures that comply with 29 CFR 1910.23 or 1910.28, or by the use of suitable lifesaving equipment that complies with 46 CFR part 160. In addition, the operator must take measures to control the risk of falling, tripping, or slipping in work areas and walkways due to the presence of loose material or wet conditions including spills.

Machine Guards

§ 150.620 What are the requirements for protecting personnel from machinery?

The deepwater port operator must ensure that all personnel are protected from the risks created by operating machinery through the use of guard

devices or other measures that comply with 29 CFR 1910.212, or through the use of conspicuously posted warning signs that comply with 150.626 of this part.

Slings

§ 150.621 What are the requirements for slings?

The use of slings for material handling must comply with the requirements of 29 CFR 1910.184.

Warning Signs

§ 150.622 What are the warning sign requirements?

The construction and use of warning signs must be in compliance with 29 CFR 1910.144 and 1910.145.

Confined Space Safety

§ 150.623 What are the requirements for protecting personnel from hazards associated with confined spaces?

(a) All personnel must be protected by suitable measures from inadvertently entering a confined space containing a hazardous atmosphere that can cause death or serious injury.

(b) Each deepwater port operator shall evaluate the port-specific hazards associated with confined space entry and develop a confined space safe entry program that complies with:

(1) 29 CFR 1910.146 for permit-required confined spaces, where applicable; and

(2) A national consensus standard, as that term is defined in 29 CFR 1910.2, or that is set by a nationally recognized testing laboratory as defined in 29 CFR 1910.7 and that provides levels of personnel protection at least equivalent to those provided for shipyard personnel by 29 CFR part 1915, subpart B.

(c) To implement the confined space safe entry program, the deepwater port operator must determine the education, training and experience needed by the designated competent persons to safely conduct their duties, including:

(1) Identification, testing, and certification of confined spaces; and

(2) Training of personnel regarding dangers, etc.

(d) These measures must be specified in the port operations manual, along with a list of all confined spaces on the port, describing the specific hazards associated with each such space.

Blood-Borne Pathogens

§ 150.624 What are the requirements for protecting personnel from blood-borne pathogens?

Measures for protection from the dangers of blood-borne pathogens must be taken in compliance with 29 CFR 1910.1030.

Hazard Communication Program

§ 150.625 What must the hazard communication program contain?

(a) Each deepwater port must have a hazard communication program (HCP) available for the training of, and review by, all personnel on the deepwater port.

(b) The program must be in writing and describe or include:

(1) An inventory of each hazardous material on the deepwater port;

(2) The potential hazards of the material;

(3) The material's intended use on the deepwater port;

(4) The methods for handling and storing the material;

(5) The protective measures and equipment to be used to avoid hazardous exposure;

(6) The labeling, marking, or tagging of the material;

(7) The special precautions, such as lockout and tagout under §§ 150.616–150.617, that should be emphasized when working around the material;

(8) Information and training required for personnel onboard the deepwater port; and

(9) A material safety data sheet (MSDS) for the material.

(c) The information on a material safety data sheet on the material may be used as a substitute for items in paragraph (b) of this section that are addressed in the sheet.

(d) The program must be supplemented as necessary to address each hazardous material newly introduced on the deepwater port.

§ 150.626 What is the hazard communication program used for?

(a) The hazard communication program must ensure that all deepwater port employees, when required by their duties, work safely and responsibly with hazardous materials.

(b) The person in charge for safety must ensure that, before a person is allowed to work at the deepwater port:

(1) A copy of the hazard communication program is made available to the person; and

(2) The person is trained in the information contained in the program.

(c) The training must be supplemented to address each hazardous material newly introduced on the deepwater port.

§ 150.627 Must material safety data sheets be available to all personnel?

(a) The person in charge must ensure that a material safety data sheet (MSDS) for each hazardous material on the fixed or floating deepwater port is made available to all personnel on the port.

(b) Each MSDS must contain at least information on the use, proper storage, potential hazards, and appropriate protective and response measures to be taken when exposed to or handling the material.

§ 150.628 How must the operator label, tag, and mark a container of hazardous material?

The operator must label, tag, or mark each container of hazardous material with the identity of the hazardous material and the appropriate physical, health, reactivity and other special condition hazard warnings. The only exception is for portable containers for transferring a hazardous material from a labeled container to the work site for immediate use by the person who performs the transfer.

Subpart H—Aids to Navigation

§ 150.700 What does this subpart do?

This subpart provides requirements for the operation of aids to navigation at a deepwater port.

§ 150.705 What are the requirements for maintaining and inspecting aids to navigation?

(a) All aids to navigation must be maintained in proper operating condition at all times.

(b) The Coast Guard may inspect all aids to navigation at any time without notice.

§ 150.710 What are the requirements for supplying power to aids to navigation?

The power to all aids to navigation must be maintained, at all times, at or above the level recommended by the equipment's manufacturer.

§ 150.715 What are the requirements for lights used as aids to navigation?

(a) Each light under part 149, subpart E of this chapter, used as an aid to navigation at a deepwater port, must be lit continuously from sunset to sunrise.

(b) During construction, a platform or SPM (if positioned on the surface or within the net under-keel depth for tankers transiting within the safety zone) must be marked with at least one of the following:

(1) The obstruction lights required for the structure in part 149, subpart E, of this chapter;

(2) The fixed lights of a vessel attending the structure; or

(3) The general illumination lights on the structure, if they meet or exceed the intensity required for obstruction lights required for the structure.

(c) The focal plane of each obstruction light and rotating lighted beacon must

always coincide with the horizontal plane that passes through the light source.

§ 150.720 What are the requirements for sound signals?

The sound signal on each pumping platform complex must be operated whenever the visibility in any horizontal direction from the structure is less than 5 miles. If the platform is under construction, this requirement may be met by the use of a 2-second whistle blast, made every 20 seconds by a vessel moored at the platform.

Subpart I—Reports and Records

§ 150.800 What does this subpart do?

This subpart concerns reports that must be submitted, and records that must be kept, by the licensee.

Reports

§ 150.805 What reports must be sent both to a classification society and to the Coast Guard?

A copy of each report submitted to an authorized classification society, as defined in 46 CFR 8.100 for maintenance of an SPM's class under the rules of that society, must also be submitted to the OCMI.

§ 150.810 Reporting a problem with an aid to navigation.

(a) Any problem affecting the operation or characteristics of an aid to navigation at the deepwater port must be reported, by the fastest means available, to the District Commander. The report must identify:

(1) The aid to navigation affected;

(2) The location of that aid;

(3) The nature of the problem; and

(4) The estimated time of repair.

(b) When the problem is corrected, the District Commander must be notified.

§ 150.815 How must casualties be reported?

(a) Immediately after aiding the injured and stabilizing the situation, the owner, operator, or person in charge of a deepwater port must notify the nearest Marine Safety Office, Coast Guard Activity, or Coast Guard Group Office of each event on, or involving, the deepwater port that results in one or more of the following:

(1) Loss of life;

(2) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on the deepwater port, that renders the individual unfit to perform his or her routine duties;

(3) Impairment to the operation of any of the port's primary lifesaving or fire-fighting equipment; or

(4) Property damage in excess of $100,000, including damage resulting from a vessel or aircraft striking the port. This amount includes the cost of labor and material to restore all affected items, including, but not limited to, the port and the vessel or aircraft to their condition before the damage. This amount does not include the cost of salvage, cleaning, gas freeing, dry-docking, or demurrage of the port, vessel, or aircraft.

(b) The notice under paragraph (a) of this section must identify the following:

(1) The deepwater port involved;

(2) The owner, operator, or person in charge of the port;

(3) The nature and circumstances of the event; and

(4) The nature and extent of the injury and damage resulting from the event.

§ 150.820 When must a written report of casualty be submitted and what must it contain?

(a) In addition to the notice of casualty under § 150.815, the owner, operator, or person in charge of a deepwater port must submit a written report of the event to the nearest OCMI within 5 days after the notice of casualty. The report may be on Form 2692 (Report of Marine Accident, Injury, or Death) or in narrative form if it contains all of the applicable information requested in Form 2692. Copies of Form 2692 are available from the OCMI.

(b) The written report must also include the information relating to alcohol and drug involvement specified by 46 CFR 4.05–12.

(c) If filed immediately after the event, the written report required by paragraph (a) of this section serves as the notice required under § 150.815.

§ 150.825 Reporting a diving-related casualty.

Diving-related deaths and injuries within the safety zone of a deepwater port must be reported according to 46 CFR 197.484 and 197.486, rather than to §§ 150.815 and 150.820.

§ 150.830 Reporting a pollution incident.

Oil pollution incidents involving a deepwater port are reported according to §135.305 and 135.307 of this chapter.

§ 150.835 Reporting sabotage or a subversive activity.

The owner, operator, or person in charge of a deepwater port must immediately report to the COTP, by the fastest possible means, any evidence of sabotage or subversive activity against any vessel at the deepwater port or against the deepwater port itself.

Records

§ 150.840 What records must be kept?

(a) The licensee must keep copies at the deepwater port of the reports, records, test results, and operating data required by this part. In the case of unmanned deepwater ports, these copies must be kept at the operator's principal office rather than on the port.

(b) The copies must be readily available to Coast Guard inspectors.

(c) Except for personnel records under § 150.845, the copies must be kept for 3 years.

§ 150.845 Personnel records.

The licensee must keep documentation on the designation and qualification of the supervisory positions, outlined in the port operations manual, that are responsible for the management of the deepwater port. These records must be kept for the life of the deepwater port.

§ 150.850 How long must a declaration of inspection form be kept?

The licensee must keep signed copies of the declaration of inspection forms required by § 150.430 for one month from the date of signature.

Subpart J—Safety Zones, No Anchoring Areas, and Areas To Be Avoided

§ 150.900 What does this subpart do?

(a) This subpart provides requirements for the establishment, restrictions, and location of safety zones, no anchoring areas, and areas to be avoided around deepwater ports.

(b) Subpart D of this part, concerning vessel navigation and activities permitted and prohibited at deepwater ports, applies within safety zones, no anchoring areas, and areas to be avoided and their adjacent waters and supplements the International Regulations for Preventing Collisions at Sea.

(c) Recommended shipping safety fairways, associated with deepwater ports, are described in part 166 of this chapter.

§ 150.905 Why are safety zones, no anchoring areas, and areas to be avoided established?

Safety zones, no anchoring areas, and areas to be avoided under this subchapter are established to promote safety of life and property, marine environmental protection, and navigational safety at deepwater ports and adjacent waters. Safety zones, no anchoring areas, and areas to be avoided

accomplish these objectives by preventing or controlling specific activities, limiting access by vessels or persons, and by protecting the living resources of the sea from harmful agents.

§ 150.910 What installations, structures, or activities are prohibited in a safety zone and area to be avoided?

No installations, structures, or activities that are incompatible with port operations are allowed in the safety zone and area to be avoided of a deepwater port.

§ 150.915 How are safety zones, no anchoring areas, and areas to be avoided established and modified?

(a) Safety zones, no anchoring areas, and areas to be avoided are developed and designated during the application process for a deepwater port license and may be modified according to this section.

(b) Before a safety zone, no anchoring area, and area to be avoided is established, all factors detrimental to safety, including the congestion of vessels, the presence of unusually harmful or hazardous substances, and the presence of obstructions around the site of the deepwater port, are considered.

(c) Commandant (G–M) shall establish safety zones and develop no anchoring areas and areas to be avoided for presentation to the International Maritime Organization (IMO) for approval. Commandant (G–M) may consult with the District Commander prior to establishing safety zones. Once established, the District Commander may request that Commandant (G–M) modify an existing safety zone. The Commandant (G–M) may then publish a final rule modifying the zone and area in its regulations. Routing measures requiring approval by the International Maritime Organization in order to be effective will be effective only after such approval is granted and such approval is announced by subsequent notice in the **Federal Register.**

(d) When there is an imminent threat to the safety of life and property within the zone and area, the District Commander may modify the safety zone and its regulations in an interim rule without first requesting that Commandant (G–M) publish a notice of proposed rulemaking. The interim rule makes the safety zone, no anchoring area, and area to be avoided and the regulations thereto effective on publication in the **Federal Register,** provided those routing measures requiring approval at the International Maritime Organization have received that approval, and requests public comments. After considering the comments received, the Commandant (G–M), after consulting with the District Commander, shall publish a final rule, which may adopt the interim rule with or without changes or remove it.

(e) If required by circumstances, safety zones and areas to be avoided may be placed into effect immediately but must be followed promptly by the procedures in paragraph (d) of this section.

§ 150.920 How is notice given of new or proposed safety zones, no anchoring areas, and areas to be avoided?

In addition to documents published in the **Federal Register** under § 150.915, the District Commander may provide public notice of new or proposed safety zones, no anchoring areas, and areas to be avoided by Broadcast Notices to Mariners, Notices to Mariners, Local Notices to Mariners, newspapers, broadcast stations, or other means.

§ 150.925 How long may a safety zone, no anchoring area, and area to be avoided last?

A safety zone, no anchoring area, and area to be avoided and applicable regulations may go into effect as early as when equipment and materials for construction of the deepwater port arrive at the site and may remain in effect until the deepwater port is removed.

§ 150.930 What datum is used for the geographic coordinates in this subpart?

The geographic coordinates used in this subpart are not intended for plotting on charts or maps using coordinates based on the North American Datum of 1983 (NAD 83). If you use the geographic coordinates in this subpart to plot on a chart or map referencing NAD 83, you must make corrections as shown on the chart or map.

Dated: December 16, 2003.

T.H. Gilmour,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–32204 Filed 12–30–03; 9:36 am]

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Federal Register

Tuesday,
January 6, 2004

Part III

Department of Defense

Department of the Army

Privacy Act of 1974; System of Records; Notice

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is proposing to amend 30 systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The administrative amendments being made to the notices reflect the Department of the Army's General Order No. 7, whereby the 'U.S. Total Army Personnel Command of Alexandria, VA.' and the 'U.S. Army Reserve Personnel Command of St Louis, MO.' were inactivated, and replaced with the 'U.S. Army Human Resources Command'. General Order No. 7 became effective October 2, 2003.

DATES: This proposed action will be effective without further notice on February 4, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Act Office, U.S. Army Records Management and Declassification Agency, Attn: AHRC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 24, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001 TAPC–ARI

SYSTEM NAME:

Professional Staff Information File (October 18, 1999, 64 FR 56196).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0001 AHRC–ARI'.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete from entry '5 U.S.C. 301, Departmental Regulations'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete 'ATTN: TAPC–ARI–ASZ' from entry.

* * * * *

A0001 AHRC–ARI

SYSTEM NAME:

Professional Staff Information File.

PRIVACY ACT SYSTEM LOCATION:

Headquarters, U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Army civilian psychologists, engineers, economists, sociologists, and other professional staff members employed by the Army Research Institute who voluntarily supply information for release and military officers assigned to the Army Research Institute who voluntarily provide information for release.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain names of individuals and their curricula vitae, including data and information on the qualifications, expertise, experience and interests of the professional staff of the Army Research Institute. Data include name, grade or rank, Institute assignment, education, prior professional experience, professional activities and development, lists of awards and recognition, extra-government professional activities and significant professional publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To establish and maintain a professional staff directory which is used to consider staff members with special expertise for special duty assignments and to produce evidence of professional staff qualifications during Institute peer reviews and similar independent evaluations.

Records are also used as basis for summary statistical reports concerning professional qualifications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on a personal computer.

RETRIEVABILITY:

Information is retrieved by the surname of professional person. Categorical data is retrieved by keyword.

SAFEGUARDS:

Records are accessible only to designated individuals having official need-to-know in the performance of assigned duties.

RETENTION AND DISPOSAL:

Information will be maintained during the tenure of the person and deleted upon permanent departure from the Institute.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–

21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals employed by or assigned to the Army Research Institute who voluntarily submit requested information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0001b TAPC

SYSTEM NAME:

Unit Administrative Military Personnel Records (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A001b AHRC'.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace '5 U.S.C. 301, Departmental Regulations' with '10 U.S.C. 3013, Secretary of the Army.'

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command'' with 'U.S. Army Human Resources Command'.

* * * * *

A0001b AHRC

SYSTEM NAME:

Unit Administrative Military Personnel Records.

SYSTEM LOCATION:

Headquarters, Department of the Army Staff, major commands, field operating agencies, installations and activities performing unit level administration for military personnel, whether active, inactive (reservist MOEDES) and including the National Guard. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel (And in some instances, their dependents) at the local supervisory level (i.e., battalion PAC/S1, company, platoon/squad, or comparable office size) when the individual's Military Personnel Records Jacket (MPRJ) or other personnel records are maintained elsewhere.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records/documents of a temporary nature which are needed in the day-to-day administration/supervision of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and E.O. 9397 (SSN).

PURPOSE(S):

To provide supervisors/unit commanders a ready source of information for day-to-day operations and administrative determinations pertaining to assigned/attached personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, index-cards, microfiche, magnetic tape/disk.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Information is stored in locked rooms/buildings with access restricted to individuals whose duties require a need-to-know. Where information exists on word processing disk/diskettes/tapes or in automated media, the administrative, physical, and technical requirements of Army Regulation 380–19, Information Systems Security, are assured to preclude improper use or inadvertent disclosure.

RETENTION AND DISPOSAL:

Records are destroyed not later than 1 year after departure of the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to their immediate supervisor.

Individual should provide the full name, Social Security Number, and particulars which facilitate locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the custodian of the record at the location to which assigned/attached.

Individual should provide the full name, Social Security Number, and particulars which facilitate locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Copy of documents in individual's Official Military Personnel File, Military Personnel Records Jacket, Career Management Information File, individual's supervisor, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0015–34 ARPC

SYSTEM NAME:

Army Civilian/Military Service Review Board (June 14, 2001, 66 FR 32336).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0015–34 AHRC'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Army Reserve Personnel Command' with 'U.S. Army Human Resources Command'.

* * * * *

A0015–34 AHRC

SYSTEM NAME:

Army Civilian/Military Service Review Board.

SYSTEM LOCATION:

U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilians or contractual personnel (or their survivors) who were members of a group certified to have performed active military service with the Armed Forces of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application of individuals for recognition of service, evidence that

supports claim of membership in an approved group, name, address, date of birth, social security number, action of the Army Civilian/Military Service Review Board, Certificate of Release or Discharge from Active Duty, Honorable Discharge Certificate, General Discharge Certificate, and/or Report of Casualty as appropriate, and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 38 U.S.C. 106, Certain service deemed to be active service; Pub. L. 105–368, Veterans Benefits Enhancement Act of 1998; Pub. L. 95–202, GI Bill Improvement Act; DoD Directive 1000.20, Active Duty Service Determinations for Civilian or Contractual Groups; Army Regulation 15–34 Department of the Army Individual Service Review Board; and E.O. 9397 (SSN).

PURPOSE(S):

To determine whether individual applicants were members of civilian or contractual groups approved as having rendered service to the Army and whose service constitutes active military service, and to issue appropriate discharge or casualty documents, including applicable pay and equivalent rank or grade.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Copy of Certificate of Release or Discharge from Active Duty is furnished to the Department of Veterans Affairs for benefit entitlements.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers stored in file folders.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Information is accessible only to designated persons having official need therefore in the performance of their duties. During non-duty hours, guards assure that records areas are secured.

RETENTION AND DISPOSAL:

Control cards are permanent; maintain in current file area for 20 years then offer to National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington, DC 20408. Approved requests result in the creation of an Official Military Personnel File, containing Certificate of Release or Discharge from Active Duty, Honorable Discharge Certificate, General Discharge Certificate, and/or Report of Casualty as appropriate, which is retired permanently, to National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100. Documentation relating to disapproved requests are maintained for 2 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name at the time of the recognized military service, date and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name at the time of the recognized military service, date and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0025–55 TAPC

SYSTEM NAME:

Freedom of Information Act Program Files (May 9, 2003, 68 FR 24954).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0025–55 AHRC'.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '5 U.S.C. 301, Departmental Regulations'.

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A0025–55 AHRC

SYSTEM NAME:

Freedom of Information Act Program Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to E.O. 12958, National Classified Security Information, as amended. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to E.O. 12958, National Classified Security Information, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act, as amended by Pub. L. 93–502; 5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 3013, Secretary of the Army; Army Regulation 25–55, The Department of the Army Freedom of Information Act Program; and E.O. 12958, National Classified Security Information, as amended.

PURPOSE(S):

To control administrative processing of requests for information either

pursuant to the Freedom of Information Act or to E.O. 12958, National Classified Security Information, as amended, including appeals from denials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users identification and password to protect the system from unauthorized access. User identification and passwords are changed at random times.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 6 years; and if appealed, records are retained 6 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/ Privacy Acts Division, 7798 Cissna Road, Springfield, VA 22153–3166.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Acts Division, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Acts Division, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide enough information to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from 'other' systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records of which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0065 TAPC

SYSTEM NAME:

Postal and Mail Service System (April 28, 1999, 64 FR 22839).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0065 AHRC'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Army Reserve Personnel Command' with 'U.S. Army Human Resources Command''.

* * * * *

A0065 AHRC

SYSTEM NAME:

Postal and Mail Service System.

SYSTEM LOCATION:

Postal facilities at Army headquarters offices, commands, and installations. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons designated as postal clerks; military and civilian personnel assigned/attached to Army installations who require mail handling service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Designating Army postal clerks/ NCO's/supervisors/orderlies (DD Form 285); locator cards (DA Form 3955) comprising a directory of individuals assigned, en route, and/or departing given installation, showing individual's full name, grade, current mailing address, date of assignment/detachment, and Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; DoD 4525.6–M, DoD Postal Manual; and E.O. 9397 (SSN).

PURPOSE(S):

To designate persons authorized to perform Army postal functions; to maintain current addresses of persons arriving/departing units for the purpose of handling personal mail.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the U.S. Postal Service.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche and electronic storage media.

RETRIEVABILITY:

By individual's surname and/or Social Security Number.

SAFEGUARDS:

Records are located in secured buildings, accessible only to designated persons having an official need for the information. Electronic information is password controlled.

RETENTION AND DISPOSAL:

Documents designating postal personnel are destroyed two years from the termination/revocation date of designation. Directory locator cards (DA Form 3955) are retained for 12 months after member's departure from unit and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–PDO–IP, Army Postal Officer, 200 Stovall Street, Alexandria, VA 22332–0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Installation Postal Director at the unit where assigned or employed.

Individual should provide the full name, Social Security Number, current address, and signature to assist in locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Installation Postal Director at the unit where assigned or employed.

Individual should provide the full name, Social Security Number, current address, and signature to assist in locating the records. Personal visits may be made; individual must furnish proof of identity.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, unit commanders and Army postal officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0210–190 TAPC

SYSTEM NAME:

Individual Gravesite Interment Files (April 12, 1999, 64 FR 17640).

CHANGES:

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SYSTEM IDENTIFIER:

Delete entry and replace with 'A0210–190 AHRC'.

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SYSTEM LOCATION:

Replace 'U.S. Army Reserve Personnel Command' with 'U.S. Army Human Resources Command', and change office symbol to 'AHRC–PED–A'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Army Reserve Personnel Command' with 'U.S. Army Human Resources Command', and change office symbol to 'AHRC–PED–A'.

* * * * *

A0210–190 AHRC

SYSTEM NAME:

Individual Gravesite Interment Files.

SYSTEM LOCATION:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–PED–A, 2461 Eisenhower Avenue, Alexandria, VA 22331–0482 for Army post cemeteries and at Army installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and former Armed Forces personnel and their dependents who are or will be interred in grave plots in Army post cemeteries or who reserved grave plots prior to 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

Gravesite record of interment (DA Forms 2122 and 2123); reservations prior to 1961; deceased individuals' name, address, date of birth, date of death, and section of grave reserved or interred in, military service, or dependent name and the relationship to service member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To maintain records of individuals interred in Army post cemeteries; to conduct periodic surveys to determine validity of reservations; and to respond to inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran Affairs for the purposes of issuing a government headstone.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefore in the performance of their duties. Records are kept in secure office areas in a secure building.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–PED–A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482 for Army post cemeteries.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this records system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–PED–A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482.

Individual should provide full name of veteran, or deceased individual's name and sufficient details to permit locating pertinent records and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–PED–A, 2461 Eisenhower Avenue, Alexandria, VA 23321–0482.

Individual should provide full name of veteran, or deceased individual's name and sufficient details to permit locating pertinent records and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her representative or next-of-kin; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0340–21 TAPC

SYSTEM NAME:

Privacy Case Files (May 9, 2003, 68 FR 24954).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0340–21 AHRC'.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '5 U.S.C. 301, Departmental Regulations'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'Office' with 'Division'.

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A0340–21 AHRC

SYSTEM NAME:

Privacy Case Files.

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Records also exist in offices of Access and Amendment Refusal Authorities when an individual's request to access and/or amend his/her record is denied. Upon appeal of that denial, record is maintained by the Department of the Army Privacy Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Army or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; copies of the requested and amended or unamended records; statements of disagreement; and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, the Privacy Act of 1974, as amended; 5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 3013, Secretary of the Army; and Army Regulation 340–21, The Army Privacy Program.

PURPOSE(S):

To process and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records by the data subject against agency rulings; and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By name of requester on whom the records pertain.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Approved requests, denials that were not appealed, denials fully overruled by appellate authorities and appeals adjudicated fully in favor of requester are destroyed after 4 years. Appeals denied in full or in part are destroyed after 10 years, provided legal proceedings are completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, ATTN: Freedom of Information/Privacy Act Division, 7798 Cissna Road, Springfield, VA 22153–3166.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Act Division, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Act Division, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from ''other'' systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those ''other'' systems of records are entered into these PA case records, the Department of the Army hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR

part 505. For additional information contact the system manager.

A0600–8 ARPC

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System (December 23, 1997, 62 FR 67055).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8 AHRC'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete from entry '5 U.S.C. 301, Departmental Regulations'.

* * * * *

SYSTEM LOCATION:

Replace 'U.S. Army Reserve Personnel Command' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8 AHRC

SYSTEM NAME:

Individual Ready, Standby, and Retired Reserve Personnel Information System (December 23, 1997, 62 FR 67055).

SYSTEM LOCATION:

U.S. Army Human Resources Command, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army Reserve and assigned to a Reserve unit and not serving on extended active duty in an entitled reserve status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and military status and qualifications data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and E.O. 9397 (SSN).

PURPOSE(S):

To maintain personnel data on members assigned to individual ready, standby, and retired Army Reserves; to select and order individuals to military active duty training, to identify personnel for promotion; to determine those not qualified for retention in the reserve forces; to issue annual statement of retirement credits; to select qualified members for potential assignment to active Army units and reserve component units in the event of mobilization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and discs.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Records are located in secured building; access requires an ID badge and is limited to individuals having official need therefore.

RETENTION AND DISPOSAL:

Records are maintained for 7 months after individual completes statutory or contractual reserve commitment.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–IMG–F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–IMG–F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–IMG–F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, Social Security Number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the Official Military Personnel File and the Military Personnel Records Jacket.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–1a TAPC

SYSTEM NAME:

Emergency Data Files (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–1a AHRC'.

* * * * *

SYSTEM LOCATION:

Replace 'U.S. Army Reserve Personnel Command with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–1a AHRC

SYSTEM NAME:

Emergency Data Files.

SYSTEM LOCATION:

U.S. Army Human Resources Command, Alexandria, VA 22332–0400. Copy of Record of Emergency Data (DD Form 93) exists in soldier's field Military Personnel Records Jacket (MPRJ).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains DD Form 93, Record of Emergency Data. Document reflects the service member's name; Social Security Number; spouse and children's names and current address; persons to be and not to be notified in the event of death or injury; information on wills, insurance, and other such information; and designation of beneficiaries for certain benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and E.O. 9397 (SSN).

PURPOSE(S):

To document names and addresses of person(s) to be notified in emergency situations; to determine lawful disposition of service member's pay and allowances when that member is missing, captured, or becomes a casualty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Machine processed card in vertical file; paper copy in MPRJ.

RETRIEVABILITY:

Card is retrieved by Social Security Number; paper copy in MPRJ is retrieved by soldier's surname.

SAFEGUARDS:

Building employs security guards; the office in which record is located is in operation 24 hours a day, 7 days a week. Records are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The Emergency Data Card is retained until individual separates from the Army; then destroyed. Copy in the MPRJ is retired with the MPRJ. If individual dies, the form becomes part of the casualty case file which is retired upon completion to the National Personnel Records Center (Military), St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–PEC, Alexandria, VA 22332–0400.

Individual should provide the full name and other information that can be verified from the file.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–PEC, Alexandria, VA 22332–0400.

Individual should provide the full name and other information that can be verified from the file.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Service member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–1b TAPC

SYSTEM NAME:

Line of Duty Investigations (April 4, 2003, 68 FR 16484).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–1b AHRC'.

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SYSTEM LOCATION:

Replace 'U.S. Army Reserve Personnel Command' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–1b AHRC

SYSTEM NAME:

Line of Duty Investigations.

SYSTEM LOCATION:

Personnel Plans and Actions Branch, Personnel Service Center at Army Installations; Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601; U.S. Army Human Resources Command, Alexandria, VA 22332–0400; U.S. Army Human Resources Command, 9700 Page Avenue, St. Louis, MO 63132–5200; National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200; National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258; and Regional Support Centers for U.S. Army Reserve. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, Reserve and National Guard members who have been injured, diseased or deceased and who are in a duty status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of Medical Examination and Duty Status; Report of Investigation-Line of Duty and Misconduct Status; approval/disapproval authority memoranda, and other relevant supporting documents such as military police reports, accident reports, witness statements, and appointment instruments, and action on appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 972, Members: Effect of time lost; 10 U.S.C. 1204, Members, on Active Duty for 30 days or less or on inactive duty training: retirement; 10 U.S.C. 1207, Disability from intentional misconduct of willful neglect: separation; 10 U.S.C. 3013, Secretary of the Army; 37 U.S.C. 802, Forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs; Army Regulation 600–8–1, Army Casualty Operation/Assistance/Insurance; and E.O. 9397 (SSN).

PURPOSE(S):

To review facts and circumstances of service member's death, injury or disease and render decisions having the effect of approving/denying certain military benefits, pay and allowances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be provided to the Department of Veterans Affairs for the purpose of determining the service member's entitlement to benefits.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfiche and electronic storage media.

RETRIEVABILITY:

By Social Security number and by service member's surname.

SAFEGUARDS:

Paper records in file folders are maintained in file cabinets accessible only to authorized personnel in the performance of their duties. Electronic storage media accessible to authorized personnel with password capability.

RETENTION AND DISPOSAL:

Documents related to determining line of duty status and incident investigation concerning individual Army members are maintained for 5 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601 (For enlisted personnel on active duty); Commander, U.S. Army Human Resources Command, Alexandria, VA 22332–0400 (For officers on active duty); Commander, U.S. Army Human Resources Command, 9700 Page Avenue, St. Louis, MO 63132–5200 (For Army reserve personnel); National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200 (For separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (For full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601 (For enlisted personnel on active duty); Commander, U.S. Army Human Resources Command, Alexandria, VA 22332–0400 (For officers on active duty); Commander, U.S. Army Human Resources Command, 9700 Page Avenue, St. Louis, MO 63132–5200 (For Army reserve personnel); National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200 (For separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (For full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Appeals of determinations by authority of the Secretary of the Army are governed by AR 600–8–1, Army Casualty and Memorial Affairs and Line of Duty Investigations; collateral review of decided cases is limited to questions of completeness of the records of such determinations.

RECORD SOURCE CATEGORIES:

From the individual, medical records, service member's commander, official Army records and reports, witness statements, civilian and military law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–1c AHRC

SYSTEM NAME:

Army Casualty Information Processing System (ACIPS) (December 23, 1997, 62 FR 67055).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–1c AHRC'.

* * * * *

SYSTEM LOCATION:

Replace 'U.S. Army Reserve Personnel Command'' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–1c AHRC

SYSTEM NAME:

Army Casualty Information Processing System (ACIPS).

SYSTEM LOCATION:

U.S. Army Human Resources Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel who are reported as casualties in accordance with Army Regulation 600–8–1, Army Casualty Operations, Assistance, Insurance and Line of Duty Administrative Procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, date of birth, branch of service, organization, duty, military occupational specialty (MOS), rank, sex, race, religion, home of record, and other pertinent information; Military Personnel Records Jacket (MPRJ), health/dental records, all correspondence between Department of the Army and soldier, soldier's primary next of kin/secondary next of kin, inquiries from other agencies and individuals, DD Form 1300 (Report of Casualty).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Pub.L. 93–289; and E.O. 9397 (SSN).

PURPOSE(S):

To respond to inquiries; to provide statistical data comprising type, number, place and cause of incident to Army members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, computer printouts, punch cards, paper records in file cabinets.

RETRIEVABILITY:

By individual's name and/or Social Security Number or any other data element.

SAFEGUARDS:

All information is restricted to a secure area in buildings which employ security guards. Computer printouts and magnetic tapes and files are protected by password known only to properly screened personnel possessing special authorization for access.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC-PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

Individual should provide full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, ATTN: AHRC–PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

Individual should provide full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From casualty reports received from Army commanders and from investigations conducted by Army commanders under AR 15–6, Procedures for Investigating Officers and Boards of Officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–14 DAPE

SYSTEM NAME:

Uniformed Services Identification Card (May 15, 2002, 67 FR 34686).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–14 AHRC'.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '5 U.S.C. 301, Departmental Regulations'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command'' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–14 AHRC

SYSTEM NAME:

Uniformed Services Identification Card (May 15, 2002, 67 FR 34686).

SYSTEM LOCATION:

Headquarters, Department of the Army, Major Army commands, staff and field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, Reserve, National Guard and retired members of the uniformed services and their family members; Department of the Army civilian employees assigned overseas or residing on a military installation within the United States and their authorized family members; eligible foreign military personnel and their family members; civilian employees under contract with the Department of Defense, Uniformed Services and other government agencies and their authorized family members; Red Cross personnel authorized by the Geneva Convention to accompany the Armed Forces; as well as other civilian and uniformed service members found eligible in accordance with eligibility requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for a Uniformed Services Identification Card/DEERS Enrollment, service members name, Social Security Number, unit address and phone number, date of birth, age, blood type, marital status, family member's name, age, home address and phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–14, Identification Cards for Members of The Uniformed Services, Their Family Members, and Other Eligible Personnel; and E.O. 9397 (SSN).

PURPOSE(S):

Provide a record of identification cards issued and DEERS enrollment to ensure positive identification of personnel authorized privileges and service on military installations and/or activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Use' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes; discs; cassettes; computer printouts, and microfiche.

RETRIEVABILITY:

By service members' name and Social Security Number; by applicant's name and Social Security Number.

SAFEGUARDS:

Records are maintained in secured buildings and are accessed only by authorized personnel who are trained and cleared for access, in the performance of their duties. Established procedures for the control of computer access are in place and periodically reviewed and updated to prevent unwarranted access.

RETENTION AND DISPOSAL:

Applications for military identification cards are destroyed after 1 year. Uniformed services identification cards are destroyed when no longer needed for current operations. Registers are destroyed after 5 years, unless they are bound which are maintained for 5 years after last entry then destroyed.

Uniformed Services identification cards for family members and other eligible personnel are destroyed when voided, replaced or is no longer valid (has expired).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the issuing office where the individual obtained the identification card or to the system manager.

Individual should provide the full name, number of the identification card, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the issuing officer at the appropriate installation.

Individual should provide the full name, number of the identification card, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–22 AHRC

SYSTEM NAME:

Military Awards Case File (January 8, 2001, 66 FR 1315).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–22 AHRC'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command'' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–22 AHRC

SYSTEM NAME:

Military Awards Case File.

SYSTEM LOCATION:

U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0471. Segments exist at Army commands which have been delegated authority for approval of an award. Official mailing addresses may be obtained from the U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0471.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel on active duty, members of reserve components, U.S. civilians serving with U.S. Army units in a combat zone, and deceased former members of the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include recommendations for an award; endorsements; award board approvals/disapprovals; citation texts; Department of Army letter orders/general orders; related papers supporting the award; correspondence among the Army; service member, and individuals having knowledge/information relating to the service member concerned or the act or achievement for which an award is recommended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapters 57 and 357, Decorations and Awards; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–22, Military Awards; and E.O. 9397 (SSN).

PURPOSE(S):

To consider individual nominations for awards and/or decorations; record final action; maintain individual award case files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to public and private organizations including news media, which grant or publicize awards or honors.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By nominee's name, service number and/or Social Security Number.

SAFEGUARDS:

Records are maintained in locked file cabinets in secure buildings and are accessible only to designated personnel in the performance of their assigned duties.

RETENTION AND DISPOSAL:

Documents related to providing information about awards given to individuals, *i.e.* announcements, lists, cards, and similar information destroy after 2 years. Approval and disapproval authority: Approved awards relating to wartime and combat activities are held permanently; Approved peacetime awards and all disapproved awards are retired to the Washington National Records Center and are destroyed after 25 years. Offices not within the disapproval or approval authority maintain records for 2 years then destroy. Proficiency awards are destroyed on transfer of the individual. Public award cases: Exercising approval authority maintain records for 56 years then destroy; Non-approval authority offices maintain records for 2 years then destroy. Special achievement awards: Exercising awarding authority maintain records for 5 years then destroy; Non-Award authority offices maintain for 2 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, Awards Policy Division, 200 Stovall Street, Alexandria, VA 22332–0471.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, Awards Policy Division, 200 Stovall Street, Alexandria, VA 22332–0471.

Individual should provide the full name, service number and/or Social Security Number, grade and branch of service, name of award/honor, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, Awards Policy Division, 200 Stovall Street, Alexandria, VA 22332–0471.

Individual should provide the full name, service number and/or Social Security Number, grade and branch of service, name of award/honor, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Recommendation for Awards (DA Form 638) with supporting records, forms, statements, letters, and similar documents originated by persons other than the awardee and other individuals having information useful in making an award determination.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–22j TAPC

SYSTEM NAME:

Cold War Recognition System (February 26, 1999, 64 FR 9479).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–22j AHRC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command'' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–22j AHRC

SYSTEM NAME:

Cold War Recognition System.

SYSTEM LOCATION:

U.S. Army Information Systems Software Development Center-Washington, ATTN: CWRS, 6000 6th Street, Suite S122A, Fort Belvoir, VA 22060–5576.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Armed Forces and government civilian personnel who faithfully served the United States after World War II through the collapse of the former Soviet Union, known as the Cold War era, September 2, 1945 to December 26, 1991.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; FY98 National Defense Authorization Act, Section 1084; Army Regulation 600–8–22, Military Awards and E.O. 9397 (SSN).

PURPOSE(S):

To consider individual's request for the Cold War Recognition Certificate, and to issue/mail certificates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated, maintained on magnetic tapes or disks.

RETRIEVABILITY:

By Social Security Number or certificate recipient's name.

SAFEGUARDS:

Records are accessible only to designated individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Requests are held for 5 years.

SYSTEM MANAGER AND ADDRESS:

Chief, Personnel Service Support Division, The Adjutant General, Directorate, U.S. Army Human Resources Command, 200 Stovall Street, Suite 3S53, Alexandria, VA 22332–0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Information Systems Software Development Center—Washington, ATTN: Cold War Recognition System, ATTN: CWRS, 6000 6th Street, Suite S122A, Fort Belvoir, VA 22060–5576.

Individual should provide the full name and Social Security Number of the certificate recipient.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Information Systems Software Development Center—Washington, ATTN: Cold War Recognition System, ATTN: CWRS, 6000 6th Street, Suite S122A, Fort Belvoir, VA 22060–5576.

Individual should provide the full name and Social Security Number of the certificate recipient.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340 21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–23 TAPC

SYSTEM NAME:

Standard Installation/Division Personnel System (SIDPERS) (May 31, 2002, 67 FR 38070).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–23 AHRC'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete from entry '5 U.S.C. 301, Departmental Regulations'.

* * * * *

A0600–8–23 AHRC

SYSTEM NAME:

Standard Installation/Division Personnel System (SIDPERS).

SYSTEM LOCATION:

National Guard records are located at the Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve Component records are located at the U.S. Army Human Resources Command, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Regular Army records are located at the Army Information Processing Centers located in Chambersburg, PA 17201–4150; Huntsville, AL 35898–7340; Rock Island, IL 61299–7210; and St. Louis, MO 63120–1798.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty Army personnel, personnel attached from National Guard and/or Army reserve members of the Army National Guard, and individuals currently assigned to a U.S. Army Reserve unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, sex, race, citizenship, status, religious denomination, marital status, number of dependents, date of birth, physical profile, ethnic group, grade and date of rank, term of service for enlisted personnel, security clearance, service agreement for non-regular officers, promotion data and dates, special pay and bonus, unit of assignment and identification code, military occupational specialty, civilian occupation, additional skill identifiers, civilian and military education levels, languages, military qualification, assignment eligibility, availability and termination date thereof, security status, suspension of favorable personnel action indicator, Privacy Act disputed record indicator, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–23, Standard Installation/Division Personnel System Database Management; and E.O. 9397 (SSN).

PURPOSE(S):

To support personnel management decisions concerning the selection, distribution and utilization of all personnel in military duties, strength accounting and manpower management, promotions, demotions, transfers, and other personnel actions essential to unit readiness; to identify and fulfill training needs; and to support automated interfaces with authorized information systems for pay, mobilization, and other statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, discs, microfiche, punched cards, and computer printouts.

RETRIEVABILITY:

By Name, Social Security Number, or other individually identifying characteristics.

SAFEGUARDS:

Access to data and data storage is controlled and accessible only to authorized personnel and authorized personnel with password capability for the electronic media access.

RETENTION AND DISPOSAL:

Records are maintained one year in records holding area or current file area then retired to National Personnel Records Center. Maintained there for 75 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

National Guard: Chief, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve Component: Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310–0300.

Regular Army: Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate address below:

National Guard individuals should address inquiries to the National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve individuals should address inquiries to the Commander of the Army Headquarters in which the unit is located.

Regular Army individuals should address inquiries to their local Commander. All individuals should furnish full name, service identification number, current address and telephone number, signature, and specific information concerning the event or incident that will assist in locating the record.

Personal visits may be made. Individual must furnish proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries appropriate to the address below:

National Guard individuals should address inquiries to the National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve individuals should address inquiries to the Commander of the Army Headquarters in which the unit is located.

Regular Army individuals should address inquiries to their local Commander.

All individuals should furnish full name, service identification number, current address and telephone number, signature, and specific information concerning the event or incident that will assist in locating the record.

Personal visits may be made. Individual must furnish proof of identity.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

National Guard and Reserve Component: From the individual, individual's personnel and pay files, other Army records and reports.

Regular Army: From individual, commanders, Army records and documents, other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–101TAPC

SYSTEM NAME:

Military and Civilian Out-Processing Files (April 20, 2001, 66 FR 20278).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–101 AHRC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–101 AHRC

SYSTEM NAME:

Military and Civilian Out-Processing Files.

SYSTEM LOCATION:

Administrative offices and Army Staff agencies, field operating commands, installations and/or activities Army wide. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army active duty, National Guard, Army Reserve and Department of the Army civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Installation and Unit Clearance Records, Reassignment Records Checklist, copy of receipts or documents evidencing payment of telephone bills, return of material held on memorandum receipt and other supporting clearance matters and materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–101, Personnel (In- and Out- and Mobilization Processing); and E.O. 9397 (SSN).

PURPOSE(S):

To verify that an individual has obtained clearance from the Army Staff agency or installation's facilities and has accomplished his/her personal and official obligations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By Social Security Number and Surname of departing individual.

SAFEGUARDS:

Information is accessed only by designated persons having official need therefore.

RETENTION AND DISPOSAL:

Information concerning clearance procedures for departing soldiers, included are clearance certificates, checklists, and related information are maintained for one year then destroyed.

Information listed in the out-processing master file and out-processing outputs files treat as permanent until a disposition and retention schedule has been approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, Out-Processing Functional Proponent, 200 Stovall Street, Alexandria, Virginia 22332–0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the administrative office of the installation/activity to which the individual had been assigned.

Individual should provide the full name, Social Security Number, departure date, location of last employing office, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the administrative office of the installation/activity to which the individual had been assigned.

Individual should provide the full name, Social Security Number, departure date, location of last employing office, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–104 TAPC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ) (December 8, 2000, 65 FR 77002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–104 AHRC'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–104 AHRC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ).

SYSTEM LOCATION:

Active and Reserve Army Commands/field operating agencies, installations, activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted, warrant and commissioned officers on active duty in the U.S. Army; enlisted, warrant and commissioned officers of the U.S. Army Reserve in active reserve (unit or non-unit) status; retired persons; commissioned/warrant officers separated after June 30, 1917 and enlisted personnel separated after October 31, 1912.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records reflecting qualifications, emergency data, enlistment and related service agreement/extension/active duty orders; military occupational specialty evaluation data; group life insurance election; record of induction; security questionnaire and clearance; transfer/discharge report/Certificate of Release or Discharge from Active Duty; language proficiency questionnaire; police record check; statement of personal history; application for ID; Department of Veterans Affairs compensation forms and related papers; dependent medical care statement and related forms; training and experience documents; survivor benefit plan election certificate; efficiency reports; application/nomination for assignment; achievement certificates; record of proceeding and appellate or other supplementary actions, Article 15 (10 U.S.C. 815); weight control records; personnel screening and evaluation records; application/prior service enlistment documents; certificate barring reenlistment; waivers for enlistment; physical evaluation board summaries; service record brief; Army School records; classification board proceedings; correspondence relating to badges, medals, and unit awards, including foreign decorations; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement/discipline; dependent travel and movement of household goods; personal indebtedness correspondence and related papers; documents relating to proficiency pay, promotion, reduction in grade, release, retirement (includes documents pertaining to pre-separation and job assistance needs in transition from military to civilian life), temporary duty, individual flight records, physical examination records, aviator flight record, instrument certification papers, duty status, leave, and similar military documents prescribed for filing by Army regulations or directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

PURPOSE(S):

Personnel records are created and maintained to manage the member's Army Service effectively, document historically the member's military service, and safeguard the rights of the member and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attaché assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the General Services Administration for records storage and archival services and for printing of directories and related material which includes personal data.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management to facilitate participation of Army members in civil defense planning, training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

To the Military Banking Facilities Overseas. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

County and city welfare organizations to provide information needed to consider applications for benefits.

Penal institutions to provide health information to aid patient care.

State, county, and city officials to include law enforcement authorities to provide information to determine benefits or liabilities, or for the investigation of claim or crimes. Patriotic societies incorporated, pursuant to 36 U.S.C., in consonance with their respective corporate missions when used to further the welfare, morale, or mission of the soldier. Information can be disclosed only if the agency which receives it adequately prevents its disclosure to persons other than their employees who need such information to perform their authorized duties.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated individuals whose official duties require access; they are transferred from station to station in personal possession of the individual whose record it is or, when this is not feasible, by U.S. Postal Service.

RETENTION AND DISPOSAL

The maintenance, forwarding, and disposition of the MPRJ (DA Form 201) and its contents are governed by Army Regulations 600–8–104, Military Personnel Information Management/ Records and 635–10, Processing Personnel for Separations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Human Resources Command, 9700 Page Avenue, St. Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Human Resources Command, 9700 Page Avenue, St. Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–104b NGB

SYSTEM NAME:

Military Personnel Records Jacket (NGB) (January 25, 2001, 66 FR 7744).

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete from entry '5 U.S.C. 301, Departmental Regulations'.

* * * * *

RETENTION AND DISPOSAL:

Replace 'U.S. Total Army Personnel Command'' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–104b NGB

SYSTEM NAME:

Military Personnel Records Jacket (NGB).

SYSTEM LOCATION:

The custodian of the Military Personnel Record will either be the State Personnel Service Center (PSC) located in conjunction with the Office of the Adjutant General or each National Guard Armory in those non-PSC states: Guam, Puerto Rico, the Virgin Islands, and the District of Columbia. Addresses for each state headquarters may be obtained from the National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB–ARP–S, 111 South George Mason Drive, Arlington, VA 22204–1382.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the Army National Guard not on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

The individual's service agreement, record of emergency data, certificates of release or discharge from active duty (DD Form 214) and other service computation documents, active duty orders, military occupational specialty orders, Servicemen's Group Life Insurance election, security questionnaire and clearance, transfer requests and orders, promotions, reductions, personnel qualification record (DD Form 2091), oath of extensions of enlistment, selective reserve incentive program agreements, notice of basic eligibility (NOBE) for GI Bill, and discharge documents and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; E.O. 9397 (SSN); and AR 600–8–104, Military Personnel Information Management/Records.

PURPOSE(S):

These records are created and maintained to manage the member's National Guard Service effectively; Historically document the member's military service; and Safeguard the rights of members and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Central Intelligence Agency; Department of Agriculture; Department of Commerce; Department of Health and Human Services; Department of Education; Department of Labor; Department of State; Department of the Treasury; Department of Transportation; Federal Aviation Agency; National Transportation Safety Board; American Battle Monuments Commission; Department of Veterans Affairs; Federal Communications Commission; U.S. Postal Service; Selective Service System; Social Security Administration; state, county and city welfare organizations when information is required to consider applications for benefits; penal institutions when the individual is a patient or an inmate; state, county and city law enforcement authorities.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be

confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, as amended, in regard to accessibility of such records except to the individual to whom the record pertains. Blanket Routine Uses do not apply to these records.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records maintained in areas accessible only to authorized personnel having need therefore in the performance of official business. The Military Personnel Records Jacket is transferred from station to station in the personal possession of the individual whose record it is, or by U.S. Postal Service.

RETENTION AND DISPOSAL:

Military personnel records are retained until updated or service of individual is terminated. Following separation, the transfer of the records is to the U.S. Army Human Resources Command or to the National Personnel Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

National Guard Bureau, Army National Guard Readiness Center, ATTN: NGB–AHRC, 111 South George Mason Drive, Arlington, VA 22204–1382.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned.

For separated personnel, information may be obtained from the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

For discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service identification number, current military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the unit to which the Army National Guard member is assigned.

For separated personnel, information may be obtained from the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

For discharged or deceased personnel, contact the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5200.

For verification purposes, individual should provide full name, service identification number, current military status, and current address.

For personal visits, the requester should provide acceptable identification, *i.e.*, military identification card or other identification normally acceptable in the transaction of business.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–104b TAPC

SYSTEM NAME:

Official Military Personnel Record (December 11, 2001, 66 FR 64023).

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–104b TAPC

SYSTEM NAME:

Official Military Personnel Record.

SYSTEM LOCATION:

U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400 for active Army officers.

U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301 for active duty enlisted personnel.

U.S. Army Human Resources Command, 9700 Page Avenue, St Louis, MO 63132–5200 for reserve personnel.

National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Human Resources Command showing physical location of the Official Military Personnel of retired, separated and files on all service members returned to active duty.

National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382, for commissioned, warrant officer or enlisted soldier in the Army National Guard.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members of the U.S. Army and Army National Guard not on active duty, who are enlisted, appointed, or commissioned status; members of the U.S. Army who were enlisted, appointed, or commissioned and were separated by discharge, death, or other termination of military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Department of Veterans Affairs benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security clearance questionnaire; application/memo for retired pay; application for correction of military records; field/application for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; line of duty casualty report; U.S. field medical card; retirement points, deferment; pre-induction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment

extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C. section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/waivers/election and travel; efficiency appeals; promotion/reduction/recommendations, approvals/declinations announcements/notifications, reconsiderations/worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606; DoD Instruction 1030.1, Victim and Witness Assistance; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

PURPOSE(S):

These records are created and maintained to manage the member's Army and Army National Guard service effectively, to document historically a member's military service, and safeguard the rights of the member and the Army.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attaché assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs:

1. To provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

2. To provide information relating to authorized research projects.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, graduate record examination tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number, to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG), U.S. Army, and Army National Guard when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program,

regarding the investigation and disposition of an offense.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media and fiche.

RETRIEVABILITY:

By Social Security Number and name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent. They are retained in active file until termination of service, following which they are retired to the U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Command, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of National Guard should be sent to the Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of National Guard should be sent to the Director, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, enlistment appointment or commission related forms pertaining to individual's military status; educational and financial institutions, training or qualifications records acquired prior to or during military services; law enforcement agencies, references provided by individuals, Army records and reports, correspondence, forms, documents and other relevant papers, third parties and members of the public when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–104g TAPC

SYSTEM NAME:

Career Management Individual and Dual Component Personnel Files (December 4, 2001, 66 FR 63046).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–104g AHRC'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command'' with 'U.S. Army Human Resources Command'.

* * * * *

A0600–8–104g AHRC

SYSTEM NAME:

Career Management Individual and Dual Component Personnel Files.

SYSTEM LOCATION:

U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0474. Decentralized segments exist at the General Officer Management Office, Judge Advocate General's Office, the Chief of Chaplains Office, and the Medical Service Corps. Official mailing addresses may be obtained from U.S. Army Human Resources Command.

Dual Component Personnel files are located at the U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Army members in enlisted grades E–5 through E–9, all warrant and commission officers.

Any reserve or warrant officer on active duty as a regular Army enlisted; any reserve officer on active duty as a regular Army warrant officer. All reserve officers, warrant officers, and enlisted members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, Social Security Number, basic entry date, promotion eligibility date; orders; record briefs; statements of preference; school credit papers; transcripts; details; career personnel actions; correspondence from individual concerned; original copy of efficiency report; academic reports; qualification records; appeal actions; assignment memoranda and requests for orders; memoranda concerning professional development actions; mandatory removal date; classification data; general orders concerning service awards; service agreements; variable incentive pay data; memoranda of interviews; assignment applications; resumes of qualifications, personal background and experience supporting service member's desires, nominative action by career managers; academic reports; copies of admonition/reprimands imposed under Article 15, UCMJ, letters of appreciation/commendation/recommendation; reports/letters from accredited educational and training organizations; and similar documents, records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–39, Dual Component Personnel Management Program; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

PURPOSE(S):

To manage member's Army career, when they will be considered for promotion; military education that needs to be completed for eligibility, including assignments, counseling, and monitoring professional development.

Specific only to Dual Component members: To make determinations if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer of enlisted person and to apprise individuals of changes in the reserve program affecting them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's surname and/or Social Security Number.

SAFEGUARDS:

Records are restricted to officially designated individuals in the performance of their assigned duties. Automated data are stored in vaults in secure buildings.

RETENTION AND DISPOSAL:

Career branch individual files disposition pending until National Archives and Records Administration is approved, treat as permanent.

Reserve officer career management files are forwarded with the individual's personnel file when transferred to Army Reserve, entry to active duty National Guard, Standby or Retired Reserve, however, upon final separation the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0474.

Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200 for Dual Component individuals.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, 200 Army Pentagon, ATTN: Chief of Staff, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, 200 Army Pentagon, Room 1E417, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, 200 Army Pentagon, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0474. Individuals should designate Officer or Enlisted status.

For information concerning dual component personnel: Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, 200 Army Pentagon, ATTN: Chief of Staff, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, 200 Army Pentagon, Room 1E417, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, 200 Army Pentagon, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Army Human Resources Command, 200 Stovall Street, Alexandria, VA 22332–0474. Individuals should designate Officer or Enlisted status.

For information concerning dual component personnel: Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200 Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records; reports; enlistment, appointment, or commission related forms pertaining to the service member having a current active duty status; academic, training, and qualifications records acquired incident to military service; correspondence, forms, documents and other related papers originating in or collected by the military department for management purposes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600o TAPC

SYSTEM NAME:

Army Career and Alumni Program (ACAP XXI) (September 11, 2001, 66 FR 47181).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600o AHRC'.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '10 U.S.C. 3013, Secretary of the Army'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command' with 'U.S. Army Human Resources Command'.

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A0600o AHRC

SYSTEM NAME:

Army Career and Alumni Program (ACAP XXI).

SYSTEM LOCATION:

Primary location: Headquarters, U.S. Army Human Resources Command, ATTN: AHRC–PDT–O, 200 Stovall Street, Alexandria, VA 22332–0476.

Secondary locations: Army Career and Alumni Program Centers. A complete list of ACAP centers may be obtained by writing to the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (Active/reserve duty) and their spouses; U.S. Coast Guard personnel and their spouses; Department of Defense civilian employees and their spouses; U.S. Army National Guard personnel and their spouses; DoD personnel who retired no earlier than ninety (90) days prior to the date they requested ACAP services; and widows and widowers of deceased active duty military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain individual's name, home address, Social Security Number, date of birth, job qualifications, DD Form 2648 (Pre-Separation Counseling Checklist), and similar or pre-separation/transition counseling related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army, 10 U.S.C., Chapter 58; DoD Directive 1332.35; and E.O. 9397 (SSN).

PURPOSE(S):

To provide transition planning/counseling for individuals so that they may re-enter the civilian job market.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically on computers and on paper in file folders.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated personnel whose official duties require they have access. The personal computer system can only be accessed through a system of passwords known only to the individual and the system administrator/supervisor. Paper files are secured in locked file cabinets. The areas where the personal computer and paper files are located are secured after duty hours in locked buildings.

RETENTION AND DISPOSAL:

Records are deleted after 90 days inactivity for individual personnel records.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–PDT–O, 200 Stovall Street, Alexandria, VA 22332–0476.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in the system should address written inquiries to the Director of the ACAP Center where transition assistance was obtained or contact the system manager.

Requesting individual must submit full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Director of the ACAP Center where transition assistance was obtained or contact the system manager.

Requesting individual must submit full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and the U.S. Coast Guard records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–100 TAPC

SYSTEM NAME:

Officer Appointment Files (April 20, 2001, 66 FR 20280).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–100 AHRC'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command' with 'U.S. Army Human Resources Command'.

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A0601–100 AHRC

SYSTEM NAME:

Officer Appointment Files.

SYSTEM LOCATION:

Commander, U.S. Army Human Resources Command, Chief, Officer Records Branch, 200 Stovall Street, Alexandria, VA 22332–0400.

Secondary locations: Army installations and commands. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for appointment in the U.S. Army or U.S. Army Reserves.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual applications for appointment as a warrant or commissioned officer, evaluation reports, supplemental information regarding qualifications, notification of acceptance/rejection and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–100, Appointment of Commissioned and Warrant Officers in the Regular Army; and E.O. 9397 (SSN).

PURPOSE(S):

To determine acceptability of applicants into the Army officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets on microfiche and electronic storage media.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Records are maintained in secured areas and secured buildings accessible only to designated individuals having official need thereof in the performance of their duties.

RETENTION AND DISPOSAL:

Inquiry and eligibility files retain and destroy after 2 years. Appointment application records destroy after 1 year. Appointment selection board records retain for 3 years then destroy. Appointment lists retain and destroy after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, Officer Records Branch, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Army installation in which application was sent or to the Commander, U.S. Army Human Resources Command, Officer Records Branch, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, date of application, place to which sent, and any other information that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Army installation in which application was sent or to the Commander, U.S. Army Human Resources Command, Officer Records Branch, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, date of application, place to which sent, and any other information that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; extracts from personnel records; forms, documents, and related papers originated by or received in Army offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–210 TAPC

SYSTEM NAME:

Army Recruiting Prospect System (February 22, 1993, 58 FR 10146).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0601–210 AHRC'.

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A0601–210 AHRC

SYSTEM NAME:

Army Recruiting Prospect System.

SYSTEM LOCATION:

Army recruiting stations, brigades, and divisions; addresses may be obtained from the Commander, U.S. Army Recruiting Command, Fort Knox, KY 40121–5000. Enlistment inquiries generated by public advertising and follow-up data are maintained by Army contractor Market Compilation and Research Bureau, Inc.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospects for Army enlistment, individuals who have asked to be excluded from Army promotional mailing, third parties who refer names of prospects to recruiters or who are influential in the recruiting effort.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, home address and telephone number, schools attended, arrest record, names and addresses of prospective enlistee. On acceptance, applicant's record includes information furnished by the Military Enlistment Processing Command reflecting examination results. Also included are name, address and/or telephone number of third parties who are influential in the recruiting program, *e.g.*, city/state officials, Chamber of Commerce members, university/college/high school staff and faculty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, 504, 510 and 3013; and E.O. 9397 (SSN).

PURPOSE(S):

These records are used by the Department of the Army: (1) To review an individual's potential for enlisting; (2) to obtain school quotas for potential enlistee's skills, educational/assignment preferences and objectives; (3) to monitor recruiter performance; (4) for personnel management, statistical, and historical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, cards, magnetic tapes, mini-diskettes/discs.

RETRIEVABILITY:

By name or Social Security Number of the prospective enlistee, inquirer, recruiter, or third party referring agent.

SAFEGUARDS:

Information in this system is maintained in locked storage areas available only to designated individuals having need therefore in the performance of official duties. Personal information on prospects which is entered into the Joint Optical Information Network—a stand-alone data processor—restricts access to specially assigned recruiter ID/program codes. Administrative, physical and technical safeguards employed by the Recruiting Command and its contractor are commensurate with the sensitivity of personal data to ensure preservation of integrity and to preclude unauthorized use/disclosure.

RETENTION AND DISPOSAL:

Information furnished by a prospective enlistee is retained until 3 months following end of enlistee's initial term of service, after which it is destroyed or erased; information concerning individuals who provide names of prospects is retained until no longer needed; information on prospects not enlisted is destroyed/erased at the end of each calendar year following that in which collected.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 4000 Army Pentagon, Washington, DC 20310–4000.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should write to the commander of the recruiting station to which information was provided, or to the Commander, U.S. Army Recruiting Command, Fort Knox, KY 40121–5000.

Individual must provide full name, Social Security Number, details that will assist in locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information from this system should address requests to the commander of the recruiting station to which information was provided, or to the Commander, U.S. Army Recruiting Command, Fort Knox, KY 40121–5000.

Individual must provide full name, Social Security Number, details that will assist in locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, high school officials/yearbooks/directories, law enforcement agencies, third parties who provide prospect leads, relevant Army records/reports, influential community officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TAPC

SYSTEM NAME:

Qualitative Management Program Appeal File (April 13, 2001, 66 FR 19153).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0601–280a AHRC'.

* * * * *

A0601–280a AHRC

SYSTEM NAME:

Qualitative Management Program Appeal File.

SYSTEM LOCATION:

Active Duty Army and Active Army Reserve records are located at U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301.

Active National Guard Reserve records are located at the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Army, full time Active National Guard Reserve and Active Army Reserve enlisted members in the grades of E–6 through E–9 who have appealed a bar to reenlistment.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, pay grade, date of rank, basic active service date, estimated termination of service, primary and secondary military occupational specialties, bar to reenlistment letter/memorandum, appeal to bar to reenlistment and associated documentation, final determination of appeal by Reenlistment Appeals Board, enlisted efficiency reports, selected data elements pertaining to service record of appellant and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 635–200, Personnel Separation/Enlisted Personnel; Army Regulation 601–280, Army Retention Program; E.O. 9397 (SSN).

PURPOSE(S):

Records in this system are used for the management of personnel and manpower in order to deny continued service to non-productive enlisted soldiers and retain quality enlisted soldiers in the Army and to encourage soldiers to maintain eligibility for further service. Records in this system are used for the management of personnel, year group, and manpower, in order to retain quality soldiers in the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are protected by physical security devices, guards, and personnel clearances for individuals working with the system.

RETENTION AND DISPOSAL:

Approved certificate to bar reenlistment and approved recommendation to withdraw bar to reenlistment are filed in permanent section of the Military Personnel Records Jacket in accordance with prescribed regulations. Bar to reenlistment certificates for which total withdrawal has been approved are removed from the Military Personnel Records Jacket and destroyed. Documents used to determine reenlistment eligibility including entries transferred from personnel records, remarks by commander, additional documentation of interviews and similar information is forwarded with Military Personnel Records Jacket in accordance with prescribed regulations, destroy on reenlistment of individual.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301 for matters concerning Active Duty Army and Active Army Reserve Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200 for matters concerning Active National Guard Reserve.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301 for matters concerning Active Duty Army and Active Army Reserve; and to the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200 for matters concerning Active National Guard Reserve.

Individual should provide the full name, Social Security Number, grade, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301 for matters concerning Active Duty Army and Active Army Reserve; and to the Commander, U.S. Army Human Resources Command, 1 Reserve Way, St. Louis, MO 63132–5200 for matters concerning Active National Guard Reserve.

Individual should provide the full name, Social Security Number, grade, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army records and reports; from appellant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–280b TAPC

SYSTEM NAME:

Selective Reenlistment Bonus (April 13, 2001, 66 FR 19153).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0601–280b AHRC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command' with 'U.S. Army Human Resources Command'.

* * * * *

A0601–280b AHRC

SYSTEM NAME:

Selective Reenlistment Bonus.

SYSTEM LOCATION:

U.S. Army Human Resources Command, Selective Reenlistment Bonus Manager, 2461 Eisenhower Avenue, Alexandria, VA 22332–0451.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted soldiers in grades E–1 through E–9 who have submitted a request for a selective reenlistment bonus.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, grade, Military Occupational Specialty, documentation substantiating request for accelerated payment, advisory recommendation for Army Board for Correction of Military Records consideration, and similar relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–280, Army Retention Program; and E.O. 9397 (SSN).

PURPOSE(S):

To determine service member's qualification for selective reenlistment bonuses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname and fiscal year.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel within the performance of their duties. Records are in a secured office within a secured building.

RETENTION AND DISPOSAL:

Records are destroyed upon reenlistment of individual.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, Selective Reenlistment Bonus Manager, 2461 Eisenhower Avenue, Alexandria, VA 22331–0451.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Human Resources Command, Selective Reenlistment Bonus Manager, 2461 Eisenhower Avenue, Alexandria, VA 22331–0451.

Individual should provide the full name, Social Security Number, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written

inquiries to the Commander, U.S. Army Human Resources Command, Selective Reenlistment Bonus Manager, 2461 Eisenhower Avenue, Alexandria, VA 22331–0451.

Individual should provide the full name, Social Security Number, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rule for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, personnel records, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0602 TAPC–ARI

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files (October 18, 1999, 64 FR 56196).

CHANGE:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0602 AHRC–ARI'.

* * * * *

A0602 AHRC–ARI

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files.

SYSTEM LOCATION:

U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600 and field offices located at Fort Benning, GA; Boise, ID; Mannheim, Germany; Naval Training Center, Orlando, FL; Fort Hood, TX; Fort Knox, KY; Fort Leavenworth, KS; Fort Bragg, NC; and Fort Rucker, AL. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officer, warrant officer, and enlisted military personnel, including Army Reservists and National Guard; family members of the above service members; civilian employees of Department of Defense; and samples of civilians from the general U.S. population who are surveyed to determine why people do or do not consider military service as a career or a short-term employment option.

CATEGORIES OF RECORDS IN THE SYSTEM:

Service member: Individual's name and Social Security Number, Army personnel records and questionnaire-type data relating to service member's pre-service education, work experience and social environment and culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments; test results from Armed Services Vocational Aptitude Battery and Skill Qualification Tests.

Non-service member: Individual's name and Social Security Number, and questionnaire type data relating to non-service member's education, work experience, motivation, knowledge of and attitude about the Army. When records show military service or marriage to a service member, the appropriate non-service records will be linked to the service record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

To research manpower, personnel, and training dimensions inherent in the recruitment, selection, classification, assignment, evaluation, and training of military personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these research records).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, CD ROM; computer disks, and magnetic tape.

RETRIEVABILITY:

By individual's name and/or Social Security Number. For research purposes, the data are usually retrieved and analyzed with respect to relative times of entry into service, training performance, and demographic values. Scheduled data for follow-up data collections however, are retrieved by month of scheduled follow-up and by name.

SAFEGUARDS:

Access to records is restricted to authorized personnel having official need therefore. Automated data are further protected by controlled system procedures and code numbers governing access.

RETENTION AND DISPOSAL:

Information is retained until completion of appropriate study or report, after which it is destroyed by shredding or erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: AHRC–ARI–ASZ, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: AHRC–ARI–ASZ, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of survey, if known.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: AHRC–ARI–ASZ, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of survey, if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his or her peers, or, in the case of ratings and evaluations, from supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0608 TAPC

SYSTEM NAME:

Personal Affairs Files (April 12, 1999, 64 FR 16947).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0608 AHRC'.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete from entry '5 U.S.C. 301, Departmental Regulations'.

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SYSTEM MANAGER(S) AND ADDRESS:

Replace 'U.S. Total Army Personnel Command' with 'U.S. Army Human Resources Command'.

* * * * *

A0608 AHRC

SYSTEM NAME:

Personal Affairs Files.

SYSTEM LOCATION:

Decentralized to major commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army officers, warrant officers, and enlisted personnel on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Third party inquiries pertaining to such matters as dependent assistance, indebtedness, non-support, paternity claims, and marriage in overseas areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To review and answer inquiries concerning personal affairs of service members; e.g., dependent assistance, indebtedness, non-support, paternity claims, marriage in overseas areas, and similar matters that originate from third parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By service member's surname.

SAFEGUARDS:

Records are available only to designated persons having official need therefore in the performance of their duties. Records are kept in secure office areas.

RETENTION AND DISPOSAL:

Retained for 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Human Resources Command, ATTN: AHRC–PDO–IP, 200 Stovall Street, Alexandria, VA 22332–0474.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the command/installation/activity where they believe inquiry was sent.

Individual should provide the full name, current address and telephone number, and sufficient details to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the command/installation/activity where they believe inquiry was sent.

Individual should provide the full name, current address and telephone number, and sufficient details to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From third parties, official Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0614–100/200 USMA

SYSTEM NAME:

Evaluation/Assignment of Academic Instructors (September 11, 2001, 66 FR 47181).

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Change Total Army Personnel Command to United States Army Human Resources Command.

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A0614–100/200 USMA

SYSTEM NAME:

Evaluation/Assignment of Academic Instructors.

SYSTEM LOCATION:

Associate Dean for Plans and Resources, Office of the Dean, U.S. Military Academy, Dean of Academic Board, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel who apply and/or serve on the Staff and Faculty, U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application consisting of name, grade or position, Social Security Number, educational and professional qualifications such as the Graduate Record Examination (GRE) or Graduate Management Admission Test (GMAT); evaluations; Officer Record Briefs (military only); personnel actions; appointments; official photographs; curriculum vitae; letters of endorsement; award recommendations; assignment orders; application/acceptance for advanced civil schooling; correspondence between the U.S. Military Academy and the U.S. Army Human Resources Command; and other relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 4334, Command and Supervision; 10 U.S.C. 4337, Civilian Faculty and E.O. 9397 (SSN).

PURPOSE(S):

Used by the U.S. Military Academy Dean of Academic Board and department heads to assess qualifications and suitability, and manage civilian and military personnel for assignment to the Staff and Faculty, U.S. Military Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage medium.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Information is available only to designated people who have a need-to-know.

RETENTION AND DISPOSAL:

USMA files are maintained for 25 years in current file area, and are then destroyed.

All other offices, such as administrative offices, maintain the records in current file area for 10 years after transfer or separation of instructor, and are then destroyed

SYSTEM MANAGER(S) AND ADDRESS:

Associate Dean for Plans and Resources, Office of the Dean, Dean of Academic Board, West Point, NY 10996–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Associate Dean for Plans and Resources, Office of the Dean, U.S. Military Academy, Dean of Academic Board, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Associate Dean for Plans and Resources, Office of the Dean, U.S. Military Academy, Dean of Academic Board, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, sufficient details to locate records, current mailing address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; official Army or other Service records; academic institutions; letters of endorsement from third parties; U.S. Army Military Personnel Center; similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0680–31b TAPC

SYSTEM NAME:

Enlisted Personnel Management Information System (EPMIS) (August 8, 2001, 66 FR 41574).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0680–31b AHRC'.

* * * * *

A0680–31b AHRC

SYSTEM NAME:

Enlisted Personnel Management Information System (EPMIS).

SYSTEM LOCATION:

Director, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22332–0400.

Portions of the Enlisted Evaluation System is maintained at U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted Active duty, Army National Guard, Army Reserve personnel on active duty. Initial Active duty training personnel undergoing basic training or advanced individual training; former military personnel who are applicants for enlistment in grade E–1 and E–9.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Personnel Data Base (PERD TAPDB–AE) contains name, Social Security Number, sex, race, citizenship, religion, marital status, dependents, date and place of birth, residence, assignments, enlistment commitments by military occupational specialty (MOS), civilian acquired skills, advance individual training start and graduation date, aptitude area score, physical profile, ethnic group, grade/date of rank, enlistment and service promotion qualifications, military occupational skill code, education and training, aptitude, separation, retirement, and mailing address.

Recruit Quota system (REQUEST) contains selected information from PERD TAPDB–AE, soldier's education level an school subject, driver's license data, color vision test data, aptitude battery (ASVAB) scores, defense language aptitude battery score, and medical profile data (PULHES). Other information contained within includes type, date, and term of enlistment, primary enlistment option, initial processing and training locations, and dates of training. Finally the system identifies the location military entrance processing station that created the accession record, recruiter identification and recruiting are credit code.

Enlisted Year Management File (RETAIN) contains select information from PERSDB TAPDB–AE, reenlistment reclassification/and Reserve component transfer action, basic active service data, estimated termination of service, reenlistment date, civilian education, career management field, primary military occupational specialty code and date of award, source of new Primary Occupational Specialty Code, training information, status of application, assignment code, date of last status change, current location, reservation control number, security investigation status and reenlistment term.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–6, Personnel Accounting and Strength Reporting; and E.O. 9397 (SSN).

PURPOSE(S):

To accomplish personnel management, strength accounting, and manpower management actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Social Security Administration to verify Social Security Numbers.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's

compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and discs; computer printouts.

RETRIEVABILITY:

By name of individual and Social Security Number.

SAFEGUARDS:

Information is protected by physical security devices, guards, computer hardware and software safeguard features, personnel clearances and unique passwords to PERDB TAPDB–AE. A tiered security system for access to enlisted data provided via Interactive Voice Response Systems based on the sensitivity of the data items provided, encryption of data transmitted via networks, controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Offices having Army-wide responsibility; cut off annually, retain for 1 year in current file area, then retire to Washington National Records Center, destroy 25 years after cut-off. Military strength monitors at installations and major commands, destroy after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Human Resources Command, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

Selected data from Personnel Data Base (PERDB–TAPDF–AE) is also accessible to record subjects through an Interactive Voice Response System (IVRS).

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, from Army automated systems, Military Entrance Processing Command and Army Education Centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0690–200 TAPC

SYSTEM NAME:

Department of the Army Civilian Personnel Systems (June 25, 2002, 67 FR 42763).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0690–200 DAPE'.

* * * * *

A0690–200 DAPE

SYSTEM NAME:

Department of the Army Civilian Personnel Systems.

SYSTEM LOCATION:

Office of Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300. Derivative Systems are maintained at commands, installations and activities dependent on the type of system maintained. Command-wide systems are the Civilian Personnel Accounting System at U.S. Army Military District of Washington, the U.S. Army Corps of Engineers Management Information System, and the Personnel Management Information System of U.S. Army Materiel Command. Official mailing addresses may be obtained from the Office of Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Army civilian employees (appropriated and in some instances, non-appropriated funded employees), their dependents, foreign nationals, and military personnel who participate in the incentive awards and training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of automated and non-automated personnel record, such as academic disciple; career program; citizenship; date of birth; educational level; employee tenure; Federal Employees Group Life Insurance; functional classification; name of employee; nature of action; occupational series; pay basis, pay plan, rate determinant; physical handicap; position occupied and tenure; military status; salary; service computation date; sex; Social Security Number; special program identifier; step or rate; submitting office number; training data, including costs, non-duty hours, on-duty hours, principal purpose, special interest program, date of completion; type of appointment; unit identification code; veterans preference; work schedule; organizational and position data, retention data; adverse action data; Fair Labor Standards Act coverage; cost of living allowances; transportation entitlement; cost codes; leave category; salary history; wage area; position sensitivity; security investigation data; security clearance and access data; performance/suggestion/cash awards; reemployment rights; training agreement; reserve status; vessel operations qualifications; Government driver's license; food handler's permit; intern recruitment and training data; career management data including performance/potential ratings; employee evaluation; qualifications; achievements; dependent data; overseas sponsor information; state address; home address; home telephone number or alternate number, emergency contact and next of kin information; beneficiary information; leave data; foreign language code, mobilization designee tracking. Records are maintained for military personnel participating in department-wide incentive awards and training programs sponsored by operating civilian personnel offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 690–200, General Personnel Provisions; and E.O. 9397 (SSN).

PURPOSE(S):

Information in this system is used by civilian personnel offices to screen qualifications of employees; determine status, eligibility, and employee's rights, and benefits under pertinent laws and regulations governing Federal employment; compute length of service; compile reports and statistical analyses of civilian work force strength trends, accounting, and composition; and to provide personnel services; and in the event of an emergency or death of the employee to provide notification to the emergency contact.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

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SYSTEM MANAGER(S) AND ADDRESS:

Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the servicing civilian personnel office. Official mailing addresses may be obtained from the Office of Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300. Written requests must contain the individual's full name, home address, Social Security Number, current or last dates of federal employment, date and place of birth, and must be signed by the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the servicing civilian personnel office. Official mailing addresses may be obtained from the Office of Assistant G–1 for Civilian Personnel Policy, ATTN: DAPE–CP–PPD, 2461 Eisenhower Avenue, Alexandria, VA 22331–1300.

Written requests must contain the individual's full name, home address, Social Security Number, current or last dates of federal employment, date and place of birth, and must be signed by the individual.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and from the individual's official personnel file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–22 Filed 1–5–04; 8:45 am]

BILLING CODE 5001–06–P

Federal Register

Tuesday,
January 6, 2004

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 419

Medicare Program; Hospital Outpatient Prospective Payment System; Payment Reform for Calendar Year 2004; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 419

[CMS–1371–IFC]

RIN 0938–AM96

Medicare Program; Hospital Outpatient Prospective Payment System; Payment Reform for Calendar Year 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements provisions of the Medicare Prescription Drug, Improvement, and Modernization Act (DIMA) of 2003 that affect the Medicare outpatient prospective payment system (OPPS) that become effective January 1, 2004. Sections 303 and 621 of the DIMA include provisions that alter the methods for drug payment in hospital outpatient departments, some of which become effective January 1, 2004. These provisions affect the methodology for paying for pass-through and non-pass-through drugs under the OPPS. Further, the new law includes a requirement that all brachytherapy sources be paid separately. Section 411 of the DIMA reinstates the hold-harmless protection for small rural hospitals with fewer than 100 beds and extends that protection to sole community hospitals in rural areas.

DATES: *Effective date:* January 1, 2004.

Comment date: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 8, 2004.

ADDRESSES: In commenting, please refer to file code CMS–1371–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1371–IFC, P.O. Box 8018, Baltimore, MD 21244–8018.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dana Burley, (410) 786–0378.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call (410) 786–7195.

Availability of Copies and Electronic Access

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I. Background

A. Authority for the Outpatient Prospective Payment System

When the Medicare statute was originally enacted, Medicare payment for hospital outpatient services was based on hospital-specific costs. In an effort to ensure that Medicare and its beneficiaries pay appropriately for services and to encourage more efficient delivery of care, the Congress mandated replacement of the cost-based payment methodology with a prospective payment system (PPS). The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, added section 1833(t) to the Social Security Act (the Act) authorizing implementation of a PPS for hospital outpatient services. The Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), enacted on November 29, 1999, made major changes that affected the hospital outpatient PPS (OPPS). The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted on December 21, 2000, made further changes in the OPPS. The OPPS was first implemented for services furnished on or after August 1, 2000.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (DIMA) (Pub. L. 108–173), enacted on December 8, 2003, made additional changes to the Act relating to the OPPS and calendar year 2004 payment rates to be implemented January 1, 2004.

We would ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We find good cause to waive notice and comment procedures for this correction notice as set forth in section IV, ''Waiver of Proposed Rulemaking and Waiver of 30-Day Delay in the Effective Date,'' below.

B. Summary of Relevant Provisions of the DIMA

The DIMA, enacted December 8, 2003, made the following changes to the Act that relate to the OPPS:

1. Transitional Corridor Payments Extended

Section 411 of the DIMA amends section 1833(t)(7)(D)(i) of the Act and extends the hold-harmless provision for small rural hospitals. The hold harmless

transitional corridor payments will continue through December 31, 2005 for small rural hospitals having 100 or fewer beds. Section 411 of the DIMA further amends section 1833(t)(7) of the Act to provide that hold-harmless transitional corridor payments shall apply to sole community hospitals as defined in section 1886(d)(5)(D)(iii) of the Act and will continue through December 31, 2005.

2. Payment for ''Specified Covered Outpatient Drugs''

Section 621(a)(1) of the DIMA amends the Act by adding section 1833(t)(14) that requires classification of separately paid radiopharmaceutical agents and drugs or biologicals that had transitional pass-through status on or before December 31, 2002, into 3 categories: innovator multiple source drugs; noninnovator multiple source drugs; and sole source drugs. Payment levels based on the reference average wholesale price are specified for each category.

3. Payment for Drug or Biological Before HCPCS Code Assigned

Section 621(a)(1) of the DIMA amends the Act by adding section 1833(t)(15), which requires that payment be made at 95 percent of the average wholesale price (AWP) for new drugs and biologicals until a HCPCS code is assigned.

4. Payment for Pass-Through Drugs

Section 303(b) of the DIMA amends section 1842(o) of the Act. As a result, certain pass-through drugs are to be paid at 95 percent, and others at 85 percent, of the AWP. Drugs and biologicals furnished during 2004 for which pass-through payment was first made on or after January 1, 2003 (which removes them from application of section 621 of the DIMA) and were approved by the FDA for marketing as of April 1, 2003, will be paid 85 percent of AWP pursuant to section 1842(o)(1)(B) and 1842(o)(4)(A), unless sections 1842(o)(4)(B), (C) or (D) apply. Blood clotting factors furnished during 2004, drugs or biologicals furnished during 2004 that were not available for payment as of April 1, 2003, vaccines furnished on or after January 1, 2004, and drugs or biologicals furnished during 2004 in connection with the renal dialysis services if billed by renal dialysis facilities, are paid at 95 percent of the reference AWP. Drugs or biologicals that were paid on a pass-through basis under the OPPS on or after January 1, 2003 and that were available for payment as of April 1, 2003 are paid at 85 percent of the reference AWP rather than 95 percent as was previously the policy under section 1842(o) of the Act.

5. Exclude Separately Payable Drugs and Biologicals From Outlier Payments

Section 621(a)(3) amends section 1833(t)(5) of the Act to require that separately paid drugs and biologicals be excluded from outlier payments.

6. Brachytherapy Sources Are To Be Paid Separately

Section 621(b) amends the Act by adding section 1833(t)(16)(C) which requires that all devices of brachytherapy consisting of a seed or seeds (or radioactive source) be paid based on the hospital's charge for each device adjusted to cost. Also included in the new provision is a requirement that all such brachytherapy sources be excluded from outlier payments.

Payment Methodology That Applied Prior To Enactment

In the hospital outpatient prospective payment update final rule published in the **Federal Register** on November 7, 2003, CMS announced payments for 2004 under the Medicare hospital outpatient prospective payment system (68 FR 63398). The provisions of that final rule with regard to payment for brachytherapy sources, for separately payable drugs, biologicals and radiopharmaceutical agents and for pass-through drugs and biologicals is superceded in part with enactment of the DIMA, effective for services furnished on or after January 1, 2004. This interim final rule with comment presents the payment amounts that apply in 2004 that result from the changes made by DIMA.

The following is a summarization of the payment policies that we published for the 2004 OPPS before enactment of the new law.

Drugs and biologicals that were within the 2–3 year pass-through payment period were paid amounts as specified in section 1842(o) of the Act. Under the November 7 final rule, that payment was 95 percent of AWP.

Under the provisions of the November 7 OPPS final rule, payment for non-pass-through drugs, biologicals and radiopharmaceutical agents with per day median costs greater than $50 was based on data compiled from hospital claims submitted on or after April 1, 2002 through December 31, 2002. Those data were used to set median costs which were converted to relative weights, scaled for budget neutrality, and multiplied by the 2004 conversion factor, the same methodology used to set relative weights for procedural ambulatory payment classifications (APCs) under the OPPS. A detailed discussion of the rate setting methodology for the 2004 OPPS update is provided in the November 7, 2003 final rule (68 FR 63416).

Payment for drugs, biologicals and radiopharmaceutical agents that had per day median costs less than $50 and drugs, biologicals and radiopharmaceutical agents for which there was no HCPCS code, was included in the rate for the service in which the item was used. There were no separate payments for these drugs, biologicals and radiopharmaceutical agents.

Changes Required Under the DIMA

a. Changes in Payment for ''specified covered outpatient drugs'': radiopharmaceutical agents and drugs or biologicals that were paid as pass-throughs under the OPPS on or before December 31, 2002. The DIMA amends the Act by adding section 1833(t)(14) which states that payment for specified covered outpatient drugs is to be based on its ''reference average wholesale price,'' that is, the average wholesale price for the drug as determined under section 1842(o) of the Act as of May 1, 2003 (1833(t)(14)(G)).

Under new section 1833(t)(14)(B)(i) a ''specified covered outpatient drug'' is a covered outpatient drug as defined in 1927(k)(2) of the Act, for which a separate ambulatory payment classification group (APC) exists and that is a radiopharmaceutical agent or a drug or biological for which payment was made on a pass-through basis on or before December 31, 2002.

Under section 1833(t)(14)(B)(ii) of the Act, certain drugs and biologicals are designated as exceptions, which are not included in the definition of ''specified covered outpatient drugs.'' These exceptions are the following:

- A drug or biological for which payment is first made on or after January 1, 2003 under the transitional pass-through payment provision in section 1833(t)(6) of the Act.
- A drug or biological for which a temporary HCPCS code has not been assigned.
- During 2004 and 2005, an orphan drug (as designated by the Secretary).

Section 1833(t)(14)(A)(i) specifies payment limits for 3 categories of ''specified covered outpatient drugs'' in 2004. Section 1833(t)(14)(F) defines the 3 categories of ''specified covered outpatient drugs'' based on sections 1861(t)(1) and 1927(k)(7)(A)(ii), (iii) and (iv) of the Act. The categories of drugs are ''sole source drugs'', ''innovator multiple source drugs'' and ''noninnovator multiple source drugs.''

b. Definitions and payment rates for DIMA-specified categories for drugs, biologicals, and radiopharmaceutical agents. Section 1927(k) of the Act pertains to the Medicaid drug rebate program. In order to administer the Medicaid drug rebate program, CMS gathers information from manufacturers and classifies drugs into categories that are defined in sections 1927(k)(7)(A)(ii), (iii) and (iv) of the Act. We are using these category designations to guide our classification of covered OPPS drugs in order to implement the changes in payment under the OPPS that are required by DIMA in section 1833(t)(14) of the Act. The classifications are listed in the Medicaid average manufacturer price (AMP) database, which can be found at *http://www.cms.gov/medicaid/drugs/drug6.asp.* In cases when the AMP database does not provide a classification for an affected drug or biological, we relied on our clinical and pharmaceutical experts to determine the appropriate classification. Further, when there are conflicting or incomplete designations in the AMP, we assigned drugs to the noninnovator multiple-source category for payment effective January 1, 2004, until we can resolve the conflicts and make a definitive classification. Classification changes will be implemented April 1, 2004 effective for services furnished on or after January 1, 2004. We invite comments regarding the appropriate classification of the drugs listed in Table 2.

The Medicaid AMP database is updated on a quarterly basis. However, we believe that midyear changes in the classification of drugs could be confusing and burdensome for providers to administer. Therefore, the final category designations used to determine 2004 OPPS drug payments for the ''specified covered outpatient drugs'' to which section 1833(t)(14)(A)(i) of the Act applies, will remain in effect through December 31, 2004. We will update the category designations through rulemaking as part of the annual OPPS update for 2005.

The sole source category is defined in section 1833(t)(14)(F)(i) of the Act as a biological product (as defined under section 1861(t)(1) of the Act) or a single source drug (as defined in section 1927(k)(7)(A)(iv)) of the Act). Section 1927(k)(7)(A)(iv) of the Act defines the term ''single source drug'' to mean a covered outpatient drug which is produced or distributed under an original new drug application (NDA) approved by the Food and Drug Administration (FDA), including a drug product marketed by any cross-licensed producers or distributors operating under the NDA. Based on this definition, in effect, single source drugs are brand name drugs for which there is no FDA generic approval, and the term is used interchangeably with ''sole source drug'' in this preamble.

Section 621(a) of the DIMA, amends the Act by adding section 1833(t)(14)(A)(i)(I), which provides that a sole source drug shall, in 2004, be paid no less than 88 percent and no more than 95 percent of the reference AWP.

Innovator multiple source drugs are defined in section 1833(t)(14)(F)(ii) of the Act according to the definition provided in section 1927(k)(7)(A)(ii) of the Act. Section 1927(k)(7)(A)(ii) of the Act defines an innovator multiple source drug as a multiple source drug that was originally marketed under an original NDA approved by the FDA. Under this definition, these drugs were originally sole source drugs for which FDA subsequently approved a generic alternative(s). An innovator multiple source drug first must be a sole source drug.

Section 621(a) of the DIMA, amends the Act by adding section 1833(t)(14)(A)(i)(II), which provides that an innovator multiple source drug shall, in 2004, be paid no more than 68 percent of the reference AWP.

Section 1833(t)(14)(F)(III) defines a noninnovator multiple source drug according to the definition of the term in 1927(k)(7)(A)(iii). Section 1927(k)(7)(A)(iii) defines noninnovator multiple source drug as a multiple source drug that is not an innovator multiple source drug. Under this definition, noninnovator multiple source drugs are, in effect, generic drugs approved by the FDA.

Section 621(a) of the DIMA, amends the Act by adding section 1833(t)(14)(A)(i)(III), which provides that a noninnovator multiple source drug shall, in 2004, be paid no more than 46 percent of the reference AWP.

There are several drugs that are classified in the AMP database as qualifying for all three categories. A drug that meets the criteria for all 3 categories has FDA approval as an innovator drug. A generic version of the drug, the noninnovator, also has received FDA approval. In addition, there is an FDA approval for a different indication for use under a different NDA for which the drug is the sole source. When a single drug, biological or radiopharmaceutical agent that meets the definition of a single HCPCS code qualifies for all of the 3 categories in the AMP file, we are recognizing the product only as an innovator multiple source and noninnovator multiple source drug. That is, once a drug qualifies as a multiple source drug, we will not recognize it as a sole source drug for payment under the OPPS. We believe that it would be impossible to operationalize a system in which the same drug would be paid differently according to the clinical indication for its use. Medicare makes payment for a drug or biological that is reasonable and necessary to treat an illness or disease. Medicare does not base payment for drugs and biologicals according to their indicated uses, except when required by a national coverage decision. Further, to do so would circumvent the payment limitation that the law requires for drugs, biologicals and radiopharmaceutical agents that have generic competition by allowing payment for a drug that has generic competition at the sole source rate (88 to 95 percent of AWP) rather than at the limit for innovator multiple source (68 percent of AWP) or noninnovator multiple source (46 percent of AWP) drugs.

c. Definition of ''reference AWP'' and determination of payment amounts. Section 1833(t)(14)(G) of the Act defines reference AWP as the AWP determined under section 1842(o) as of May 1, 2003. We interpret this to mean the AWP set under the CMS single drug pricer (SDP) based on prices published in the Red Book on May 1, 2003.

We determined the payment amount for specified covered outpatient drugs under the provisions of the DIMA by comparing the payment amount calculated under the median cost methodology in effect prior to enactment of the DIMA to the percentages specified in new section 1833(t)(14)(A) of the Act.

Specifically, for sole source drugs, we compared the payments established in the November 7, 2003 final rule for the HCPCS code for the drug to its reference AWP. When the payment fell below 88 percent of the reference AWP, we increased the payment to 88 percent of the reference AWP. When the payment exceeded 95 percent of the reference AWP, we reduced the payment to 95 percent of the reference AWP. When the payment was no lower than 88 percent and no higher than 95 percent of reference AWP, we made no change. To receive payment for sole source drugs on or after January 1, 2004, hospitals should continue to bill the appropriate HCPCS code for the drug. Table 1 lists the payment amounts for sole source drugs, biologicals and radiopharmaceutical agents effective January 1, 2004 through December 31, 2004.

There are a few drugs for which we cannot find an AWP rate. We are working to resolve this on a case-by-case basis for each of the drugs. The drugs are: Technetium TC 99M Sodium Glucoheptonate (C1200), Cobalt Co 57 cobaltous chloride (C9013), I–131 tositumomab, diagnostic (C1080) and I–131 tositumomab, therapeutic (C1081).

With regard to C1080 and C1081, there is no AWP available because this drug did not receive FDA approval until June, 2003 and so could not be in the May 1, 2003 Red Book (AWP) that we have identified as the source of the reference AWP. We presented an in-depth discussion of our policy for payment of this drug, Bexxar, in our November 7 final rule. In that rule we explain our rationale for making payment for Bexxar parallel to that for another radiopharmaceutical called Zevalin. In order to set the payment rate for Bexxar in accordance with DIMA, we also have adhered to the policy regarding the pricing of Bexxar established in the November 7 final rule.

For the remaining drugs for which we could not identify a May 1, 2003 AWP amount, we will continue our research to find an AWP. If we are able to identify the AWP established on dates other than May 1, 2003, we will use whichever is closest to May 2003. In the interim, we will implement the payment rates published in the November 7 final rule to make payments for these drugs for January 1, 2004 through March 31, 2004. We will address our findings regarding development of payment rates for these drugs in our April update.

APC 9024 is made up of 3 sole source drugs: Amphotericin B lipid complex (J0287); Amphotericin B cholesteryl sulfate (J0288); and Amphotericin B liposome injection (J0289). To comply with the statute, these 3 drugs must all be paid separately under the OPPS and that will require that we create an APC for each of the drugs. Due to the limited time available to implement the changes required for January 1, 2004, we will not be able to implement the new APCs until April 1, 2004. We will continue to pay for these drugs in APC 9024 at the rate published in the November 7 final rule. The new APCs will be implemented April 1, 2004 and will be effective for services furnished on or after January 1, 2004.

TABLE 1.—SOLE SOURCE DRUGS

HCPCS	Status indicator	*Description*	APC	OPPS CY 2004 November 7, 2003 rate	DIMA final rate
A4642	K	Satumomab pendetide per dose	0704	$124.46	$1,474.00
A9500	K	Technetium TC 99m sestamibi	1600	64.28	112.73
A9502	K	Technetium TC99M tetrofosmin	0705	58.06	665.28
A9507	K	Indium/111 capromab pendetid	1604	687.71	2,030.60
A9511	K	Technetium TC 99m depreotide	1095	37.87	704.00
A9521	K	Technetiumtc-99m exametazine	1096	210.65	825.00
A9524	K	Iodinated I–131 serumalbumin, per 5uci	9100	0.36	48.58
A9600	K	Strontium-89 chloride	0701	402.85	892.43
C1079	K	CO 57/58 per 0.5 uCi	1079	68.51	235.14
C1080	K	I–131 tositumomab, dx	1080	2,260.00	2,565.55
C1081	K	I–131 tositumomab, tx	1081	19,565.00	22,210.19
C1082	K	In-111 ibritumomab tiuxetan	9118	2,260.00	2,565.55
C1083	K	Yttrium 90 ibritumomab tiuxetan	9117	19,565.00	22,210.19
C1092	K	IN 111 pentetate per 0.5 mCi	1092	217.45	237.60
C1122	K	Tc 99M ARCITUMOMAB PER VIAL	1122	534.77	1,144.00
C1166	K	CYTARABINE LIPOSOMAL, 10 mg	1166	278.99	344.08
C1167	K	EPIRUBICIN HCL, 2 mg	1167	20.43	25.60
C1178	K	BUSULFAN IV, 6 Mg	1178	299.70	27.87
C1200	K	TC 99M Sodium Glucoheptonat	1200	30.28	30.28
C1201	K	TC 99M SUCCIMER, PER Vial	1201	80.24	125.66
C1305	K	Apligraf	1305	822.19	1,199.00
C9003	K	Palivizumab, per 50 mg	9003	344.15	611.24
C9008	K	Baclofen Refill Kit-500mcg	9008	6.90	73.92
C9009	K	Baclofen Refill Kit-2000mcg	9009	40.92	40.92
C9010	K	Baclofen Refill Kit—4000mcg	9010	42.22	79.82
C9109	K	Tirofiban hcl, 6.25 mg	9109	118.60	218.33
C9202	K	Octafluoropropane	9202	118.60	137.28
J0130	K	Abciximab injection	1605	289.44	475.22
J0207	K	Amifostine	7000	289.40	419.59
J0287	K	Amphotericin b lipid complex	9024	20.86	20.86
J0288	K	Ampho b cholesteryl sulfate	9024	20.86	20.86
J0289	K	Amphotericin b liposome inj	9024	20.86	20.86
J0350	K	Injection anistreplase 30 u	1606	1,516.46	2,495.31
J0585	K	Botulinum toxin a per unit	0902	3.21	4.58
J0587	K	Botulinum toxin type B	9018	6.98	8.14
J0637	K	Caspofungin acetate	9019	29.64	30.52
J0850	K	Cytomegalovirus imm IV /vial	0903	291.18	659.60
J1327	K	Eptifibatide injection	1607	7.99	11.88
J1438	K	Etanercept injection	1608	102.37	143.73
J1440	K	Filgrastim 300 mcg injection	0728	123.48	172.20
J1441	K	Filgrastim 480 mcg injection	7049	175.96	290.93
J1565	K	RSV-ivig	0906	48.61	16.55
J1626	K	Granisetron HCl injection	0764	5.70	17.18
J1830	K	Interferon beta-1b / .25 MG	0910	100.51	67.22
J1950	K	Leuprolide acetate /3.75 MG	0800	182.92	479.20

TABLE 1.—SOLE SOURCE DRUGS—Continued

HCPCS	Status indicator	*Description*	APC	OPPS CY 2004 November 7, 2003 rate	DIMA final rate
J2020	K	Linezolid injection	9001	15.12	34.09
J2353	K	Octreotide injection, depot	1207	65.74	73.62
J2354	K	Octreotide inj, non-depot	7031	1.44	3.94
J2788	K	Rho d immune globulin 50 mcg	9023	1.69	32.21
J2790	K	Rho d immune globulin inj	0884	10.16	92.93
J2792	K	Rho(D) immune globulin h, sd	1609	9.76	19.03
J2820	K	Sargramostim injection	0731	16.32	26.92
J2941	K	Somatropin injection	7034	41.18	297.79
J2993	K	Reteplase injection	9005	568.33	1,263.90
J3100	K	Tenecteplase injection	9002	1,296.75	2,492.60
J3245	K	Tirofiban hydrochloride	7041	227.85	436.66
J3305	K	Inj trimetrexate glucoronate	7045	61.36	132.00
J3395	K	Verteporfin injection	1203	897.20	1,350.80
J7191	K	Factor VIII (porcine)	0926	1.52	1.89
J7195	K	Factor IX recombinant	0932	1.01	1.04
J7320	K	Hylan G–F 20 injection	1611	123.46	215.97
J7504	K	Lymphocyte immune globulin	0890	127.89	258.17
J7505	K	Monoclonal antibodies	7038	320.84	792.33
J7507	K	Tacrolimus oral per 1 MG	0891	1.34	3.24
J7511	K	Antithymocyte globuln rabbit	9104	163.56	331.23
J7520	K	Sirolimus, oral	9020	2.89	6.60
J7525	K	Tacrolimus injection	9006	5.72	110.04
J8510	K	Oral busulfan	7015	1.57	1.93
J8520	K	Capecitabine, oral, 150 mg	7042	1.65	3.14
J8700	K	Temozolmide	1086	3.76	6.81
J9001	K	Doxorubicin hcl liposome inj	7046	256.34	364.49
J9010	K	Alemtuzumab injection	9110	424.88	541.46
J9017	K	Arsenic trioxide	9012	26.91	34.32
J9020	K	Asparaginase injection	0814	16.13	58.00
J9045	K	Carboplatin injection	0811	86.47	137.79
J9098	K	Cytarabine liposome	1166	278.99	344.08
J9151	K	Daunorubicin citrate liposom	0821	163.55	64.60
J9170	K	Docetaxel	0823	220.97	331.53
J9178	K	Inj, epirubicin hcl, 2 mg	1167	20.43	25.60
J9185	K	Fludarabine phosphate inj	0842	205.74	329.83
J9201	K	Gemcitabine HCl	0828	80.43	112.09
J9202	K	Goserelin acetate implant	0810	285.16	413.59
J9206	K	Irinotecan injection	0830	100.55	135.00
J9213	K	Interferon alfa-2a inj	0834	20.61	32.31
J9214	K	Interferon alfa-2b inj	0836	10.93	13.78
J9215	K	Interferon alfa-n3 inj	0865	79.65	8.17
J9216	K	Interferon gamma 1-b inj	0838	180.15	290.70
J9217	K	Leuprolide acetate suspnsion	9217	312.37	576.47
J9219	K	Leuprolide acetate implant	7051	3,666.71	5,001.92
J9245	K	Inj melphalan hydrochl 50 MG	0840	254.90	389.14
J9268	K	Pentostatin injection	0844	965.98	1,784.64
J9270	K	Plicamycin (mithramycin) inj	0860	15.42	86.89
J9293	K	Mitoxantrone hydrochl / 5 MG	0864	173.68	332.87
J9310	K	Rituximab cancer treatment	0849	306.40	464.20
J9320	K	Streptozocin injection	0850	65.19	131.05
J9350	K	Topotecan	0852	433.41	739.80
J9355	K	Trastuzumab	1613	40.56	53.85
J9357	K	Valrubicin, 200 mg	1614	461.78	487.87
J9390	K	Vinorelbine tartrate/10 mg	0855	64.79	100.97
J9600	K	Porfimer sodium	0856	1,594.30	2,411.82
Q0136	K	Non esrd epoetin alpha inj	0733	9.83	11.76
Q0137	K	Darbepoetin alfa, non esrd	0734	3.24	3.88
Q0166	K	Granisetron HCl 1 mg oral	0765	34.49	171.78
Q0180	K	Dolasetron mesylate oral	0763	41.00	152.38
Q0187	K	Factor viia recombinant	1409	1,083.93	1,495.30
Q2003	K	Aprotinin, 10,000 kiu	7019	1.17	13.26
Q2005	K	Corticorelin ovine triflutat	7024	224.91	375.00
Q2006	K	Digoxin immune fab (ovine)	7025	271.14	1.79
Q2007	K	Ethanolamine oleate 100 mg	7026	27.82	67.10
Q2008	K	Fomepizole, 15 mg	7027	7.23	10.65
Q2009	K	Fosphenytoin, 50 mg	7028	4.88	5.63
Q2011	K	Hemin, per 1 mg	7030	0.64	6.86
Q2013	K	Pentastarch 10% solution	7040	26.40	139.94
Q2017	K	Teniposide, 50 mg	7035	137.41	238.49

TABLE 1.—SOLE SOURCE DRUGS—Continued

HCPCS	Status indicator	*Description*	APC	OPPS CY 2004 November 7, 2003 rate	DIMA final rate
Q2018	K	Urofollitropin, 75 iu	7037	63.48	63.48
Q3000	K	Rubidium-Rb-82	9025	143.89	162.63
Q3003	K	Technetium tc99m bicisate	1620	183.69	392.93
Q3005	K	Technetium tc99m mertiatide	1622	20.63	1,650.00
Q3008	K	Indium 111-in pentetreotide	1625	449.84	1,144.00
Q4052	K	Octreotide injection, depot	1207	65.74	73.62

TABLE 2.—MULTISOURCE DRUGS

HCPCS	Status indicator	Description	APC	OPPS CY 2004 November 7, 2003 rate	DIMA final rate
A9505	K	Thallous chloride TL 201/mci	1603	$19.89	$18.29
A9508	K	Iobenguane sulfate I–131, per 0.5 mCi	1045	165.82	165.82
A9517	K	Th I131 so iodide cap millic	1064	5.48	5.48
A9528	K	Dx I131 so iodide cap millic	1064	5.48	5.48
A9529	K	Dx I131 so iodide sol millic	1065	6.49	6.49
A9530	K	Th I131 so iodide sol millic	1065	6.49	6.49
A9605	K	Samarium sm153 lexidronamm	0702	874.44	493.89
C1091	K	IN111 oxyquinoline, per0.5mCi	1091	224.52	224.52
C1775	K	FDG, per dose (4–40 mCi/ml)	1775	324.48	324.48
C9013	K	Co 57 cobaltous chloride	9013	56.67	56.67
C9105	K	Hep B imm glob, per 1 ml	9105	71.33	65.58
J1190	K	Dexrazoxane HCl injection	0726	112.48	112.48
J1563	K	Immune globulin, 1 g	0905	43.96	37.95
J1564	K	Immune globulin 10 mg	9021	0.44	0.41
J1745	K	Infliximab injection	7043	38.86	31.81
J1825	K	Interferon beta-1a	0909	184.79	123.77
J2430	K	Pamidronate disodium /30 MG	0730	174.32	128.74
J7190	K	Factor viii	0925	0.51	0.42
J7192	K	Factor viii recombinant	0927	1.01	0.61
J7193	K	Factor IX non-recombinant	0931	0.51	0.51
J7194	K	Factor ix complex	0928	0.51	0.18
J7198	K	Anti-inhibitor	0929	1.01	0.69
J7310	K	Ganciclovir long act implant	0913	86.54	86.54
J7317	K	Sodium hyaluronate injection	7316	138.78	67.16
J7502	K	Cyclosporine oral 100 mg	0888	2.56	2.41
J7517	K	Mycophenolate mofetil oral	9015	2.04	1.36
J8560	K	Etoposide oral 50 MG	0802	27.37	21.91
J9000	K	Doxorubic hcl 10 MG vl chemo	0847	6.61	4.69
J9031	K	Bcg live intravesical vac	0809	103.75	77.54
J9040	K	Bleomycin sulfate injection	0857	160.56	88.32
J9060	K	Cisplatin 10 MG injection	0813	21.74	7.73
J9065	K	Inj cladribine per 1 MG	0858	37.82	24.84
J9070	K	Cyclophosphamide 100 MG inj	0815	4.74	2.77
J9093	K	Cyclophosphamide lyophilized	0816	4.50	2.36
J9100	K	Cytarabine hcl 100 MG inj	0817	5.07	1.55
J9130	K	Dacarbazine 100 mg inj	0819	5.31	5.31
J9150	K	Daunorubicin	0820	73.97	35.94
J9181	K	Etoposide 10 MG inj	0824	4.56	0.83
J9200	K	Floxuridine injection	0827	114.19	66.24
J9208	K	Ifosfomide injection	0831	106.04	72.81
J9209	K	Mesna injection	0732	28.43	17.66
J9211	K	Idarubicin hcl injection	0832	178.21	178.21
J9218	K	Leuprolide acetate injection	0861	43.60	14.48
J9265	K	Paclitaxel injection	0863	112.14	79.04
J9280	K	Mitomycin 5 MG inj	0862	53.03	30.91
J9340	K	Thiotepa injection	0851	59.93	45.31
Q2022	K	VonWillebrandFactr CmplxperIU	1618	1.01	0.46
Q3002	K	Gallium ga 67	1619	11.22	11.22
Q3007	K	Sodium phosphate p32	1624	70.61	66.44
Q3011	K	Chromic phosphate p32	1628	98.52	81.27
Q3012	K	Cyanocobalamin cobalt co57	1089	57.07	47.38
Q3025	K	IM inj interferon beta 1-a	9022	61.60	13.36

Coding for Specified Outpatient Drugs

In order to implement these provisions timely on January 1, 2004, we are instructing hospitals to use the existing HCPCS code that describes the drug for services furnished on or after January 1, 2004. For sole source drugs, the existing HCPCS code is priced in accordance with the provisions of section 1833(t)(14)(A)(i) of the Act as indicated in Table 1. However, existing HCPCS codes do not allow us to differentiate payment amounts for innovator multiple source and noninnovator multiple source forms of the drug.

Therefore, for implementation January 1, 2004, we set payment rates for all multiple source innovator and noninnovator drugs, biologicals and radiopharmaceutical agents at the lower of the payment rate in the November 7, 2003 final rule or 46 percent of the reference AWP. These rates are shown in Table 2.

Initially, we will implement sections 1833(t)(14)(A)(i)(II) and (III) of the Act in this manner because we are unable to compile a definitive list of the innovator multiple source drugs in time for January 1, 2004 implementation. On April 1, 2004, CMS will implement new HCPCS codes that providers may use to bill for innovator multiple source drugs in order to receive appropriate payment in accordance with section 1833(t)(14)(A)(i)(II) of the Act, that is, the payment amount established in the November 7, 2003 final rule or 68 percent of the reference AWP, whichever is lower. The new codes will be effective January 1, 2004 so that providers may submit adjustment bills after April 1, 2004 to receive appropriate payment for multiple source innovator drugs furnished on or after January 1, 2004 through March 31, 2004.

Beginning April 1, 2004, innovator multiple source drugs will be paid at the statutory rate as long as the new codes are used. The multiple source noninnovator rate will be the default payment rate for the existing HCPCS code assigned to the drug, and providers will continue to use the current HCPCS codes to bill for noninnovator multiple source drugs after March 31, 2004. The new HCPCS codes will be very similar to the current codes with only the distinction that the drug being billed is an innovator multiple source drug eligible for payment of as much as 68 percent of the AWP.

We recognize that creation and use of a new code to designate a drug to be an innovator multiple source drug creates burden for hospitals. However, the law provides different payment rules based on the category into which the drug falls and therefore, to ensure correct payment, hospitals must report a code for the drug that identifies the category into which it falls. We request comments on ways that we can reduce the reporting burden on hospitals that results from the law's imposing different payment limitations on brand name and generic versions of the same drug.

Table 2 lists the drugs for which the new HCPCS codes will be implemented April 1, 2004 to distinguish innovator multiple source from noninnovator multiple source drugs.

Other changes in payment methodology effective January 1, 2004 as a result of enactment of the Medicare Prescription Drug, Improvement and Modernization Act of 2003

Payment for Pass-Through Drugs, Biologicals, and Radiopharmaceuticals

Drugs and biologicals that are within the 2–3 year pass-through payment period in 2004 continue to be paid pursuant to section 1842(o) of the Act. However, section 1842(o) of the Act has been revised by section 303(b) of the DIMA and those revisions change the way that these drugs are paid.

Drugs and biologicals furnished during 2004 that are approved for pass-through payment under the OPPS and that were not approved by the FDA for marketing as of April 1, 2003 will be paid 95 percent of AWP pursuant to section 1842(o)(1)(A)(iii). *See* Table 3b for a list of these pass-through drugs.

Drugs and biologicals furnished during 2004 for which pass-through payment was first made on or after January 1, 2003 (which removes them from application of section 621 of the DIMA) and were approved by the FDA for marketing as of April 1, 2003, will be paid 85 percent of AWP pursuant to section 1842(o)(1)(B) and 1842(o)(4)(A), unless sections 1842(o)(4)(B), (C) or (D) apply. See Table 3a for a list of these pass-through drugs.

Table 3c lists 10 drugs and biologicals with pass-through status in 2004 that also meet the criteria for ''specified covered outpatient drugs'' under section 1833(t)(14). That is, the drugs in Table 3c are pass-through drugs in 2004 that were available for payment before April 1, 2003 and would therefore be paid 85 percent of AWP (determined as of April 1, 2003) under the cross reference in section 1833(t)(6)(D)(i) to section 1842(o). Separate APCs have been established for these drugs and they were paid as pass-through drugs on or before December 31, 2002. Therefore, these pass-through drugs qualify under section 1833(t)(14)(B) as ''specified covered outpatient drugs.'' As specified covered outpatient drugs, the ten drugs would be categorized as ''sole source'' drugs.

Sole source drugs, under section 1833(t)(14)(A)(i)(I) are paid no less than 88 percent nor more than 95 percent of the reference AWP. To the extent that the ten drugs listed in Table 3c qualify as both pass-through drugs and sole source drugs under the DIMA, it appears that they are subject to two different payment provisions. We have reconciled the two apparently conflicting payment provisions in a way that we believe results in the fewest anomalies. The drugs will retain their pass-through status, and therefore, the rules and policies that otherwise apply to pass-through drugs continue to apply to them. They will also be considered sole source drugs for purposes of section 1833(t)(14). We will pay for the drugs as follows.

First, because the drugs are pass-through drugs, we will give them pass-through payments. The pass-through payments will equal 85 percent of AWP (determined as of April 1, 2003) under section 1833(t)(6)(D)(i). However, because the drugs are also sole source drugs, we will also apply the payment methodology set forth in section 1833(t)(14)(A)(i)(I), and raise the payment to 88 percent of the reference AWP (the AWP determined as of May 1, 2003).

Under the payment methodology that we are applying to sole source drugs, we look at the payment that would otherwise be made and if it is less than 88 percent or greater than 95 percent of reference AWP, we adjust it as minimally as necessary to ensure that it is within the required range. In the case of these drugs, absent the provisions of 1833(t)(14)(i)(I), we would pay 85 percent of AWP (determined as of April 1, 2003). Therefore adjusting the payment that would otherwise be made results in payment at 88 percent of reference AWP.

In light of the total revamping of the methodology for payment for drugs and biologicals under OPPS, we revisited the adjustment that we made under our authority in section 1833(t)(2)(E) of the Act to ensure equitable payments in 2003 and in the November 7 final rule for the 2004 update of the OPPS. After considering the nature of the DIMA payment changes, we have concluded that it is still appropriate to apply this adjustment to the methodology discussed in the previous two paragraphs for the reasons we stated in the OPPS rulemaking during the past two years. Therefore, for darbepoetin alpha (Q0137 and C1774), we are

making an adjustment in accordance with section 1833(t)(2)(E) of the Act (which was unaffected by DIMA) to the combined pass-through amount and 3 percent additional payment provided under section 1833(t)(14)(A)(i)(I) of DIMA, resulting in a payment rate of $3.88 per unit. This payment rate is budget neutral.

TABLE 3A.—PASS-THROUGH DRUGS REIMBURSED AT 85% OF AWP

HCPCS	APC	Long description	2004 Payment amount	2004 Co-payment amount
J9395	9120	Injection, Fulvestrant, per 25 mg	$78.36	$13.09
C9121	9121	Injection, Argotroban, per 5 mg	14.63	2.44
C9123	9123	TransCyte, per 247 sq cm	689.78	115.23
C9205	9205	Injection, Oxaliplatin, per 5 mg	8.45	1.41
C9203	9203	Injection, Perflexane lipid microspheres, per single use vial	127.50	21.30
J3315	9122	Injection, Triptorelin pamoate, per 3.75 mg	356.66	59.58
J3486	9204	Injection, Ziprasidone mesylate, per 10 mg	18.60	3.11
C9211	9211	Injection, IV, Alefacept, per 7.5 mg	595.00	99.40
C9212	9212	Injection, IM, Alefacept, per 7.5 mg	422.88	70.65

TABLE 3B.—PASS-THROUGH DRUGS PAID AT 95% OF AWP

HCPCS	APC	Long description	Amount	Amount
C9207	9207	Injection, IV, Bortezomib, per 3.5 mg	1,039.68	155.40
C9208	9208	Injection, IV, Agalsidase beta, per 1 mg	123.78	18.50
C9209	9209	Injection, IV, Laronidase, per 2.9 mg	644.10	96.28
C9210	9210	Injection, IV, Palonosetron HCI, per 0.25 mg (250 micrograms)	307.80	46.01

TABLE 3C.—PASS-THROUGH DRUGS PAID AS SOLE SOURCE DRUGS AT 88% OF AWP

HCPCS	APC	Long description	OPPS CY2004 November 7 rate	DIMA final rate
J0583	9111	Injection, Bivalirudin, per 1 mg	$1.43	$1.61
C9112	9112	Injection, Perflutren lipid microsphere, per 2 ml	132.60	137.28
C9113	9113	Injection, Pantoprazole sodium, per vial	22.44	23.23
J1335	9116	Injection, Ertapenem sodium, per 500 mg	21.24	21.99
J2505	9119	Injection, Pegfilgrastim, per 6 mg single dose vial	2,507.50	2,596.00
C9200	9200	Orcel, per 36 sqare centimeters	1,015.75	1,051.60
C9201	9201	Dermagraft, per 37.5 square centimeters	516.80	535.04
J2324	9114	Injection, Nesiritide, per 0.5 mg	135.66	140.45
J3487	9115	Injection, Zoledronic acid, per 1 mg	194.52	211.07

Payment for New Drugs and Biologicals Before a HCPCS Code Is Assigned

Under new section 1833(t)(15) of the Act, as added by section 621(a)(1) of the DIMA a drug or biological that is furnished as part of covered outpatient department services for which a HCPCS codes has not been established, is to be paid at 95 percent of the AWP for the drug or biological.

We are in the process of determining how hospitals would bill Medicare for a drug prior to assignment of a HCPCS code. We will issue instructions once we have determined how to make this requirement operational.

Payment for Orphan Drugs as Designated by the Secretary

Section 1833(t)(14)(C) as added by section 621(a)(1) of the DIMA, provides that the amount of payment for orphan drugs designated by the Secretary shall, for 2004 and 2005, equal the amount the Secretary shall specify. We have determined that single indication orphan drugs as designated by the Secretary will be paid at the rates published in the November 7, 2003 **Federal Register** (68 FR 63398). Neither the definition nor the 2004 payment amounts for single indication orphan drugs under the OPPS have changed from what was published in the November 7 final rule.

Brachytherapy

Section 621(b)(1) of the DIMA of 2003 amends the Act by adding section 1833(t)(16)(C) and section 1833(t)(2)(H) which establish separate payment for devices of brachytherapy consisting of a seed or seeds (or radioactive source) based on a hospital's charges for the service, adjusted to cost. Further, charges for the brachytherapy devices shall not be used in determining any outlier payments and consistent with our practice under OPPS to exclude items paid at cost from budget neutrality consideration, these items will be excluded from budget neutrality as well. The period of payment under this provision is for brachytherapy sources furnished from January 1, 2004 through December 31, 2006.

We will pay for the brachytherapy sources listed in Table 4 on a cost basis, as required by the statute. The status indicator for brachytherapy sources is changed to ''H.'' The definition of status indicator ''H'' is currently for pass-through payment for devices, but the brachytherapy sources affected by new sections 1833(t)(16)(C) and 1833(t)(2)(H) are not pass-through device categories. Therefore, we are also changing, for 2004, the definition of payment status indicator ''H'' to include non-pass-through brachytherapy sources paid for on a cost basis. This use of status indicator ''H'' is a pragmatic decision that allows us to pay for brachytherapy sources in accordance with new section 1833(t)(16)(C) effective January 1, 2004

without having to modify our claims processing systems. We will revisit the use and definition of status indicator ''H'' for this purpose for the OPPS update for 2005. Table 4 provides a complete listing of the HCPCS codes, descriptors, APC assignments and status indicators for brachytherapy sources.

TABLE 4.—BRACHYTHERAPY SOURCES TO BE PAID SEPARATELY, USING CHARGES REDUCED TO COST

HCPCS	Descriptor	APC	APC title	New status indicator
C1716	Brachytx source, Gold 198	1716	Brachytx source, Gold 198	H
C1717	Brachytx source, HDR Ir-192	1717	Brachytx source, HDR Ir-192	H
C1718	Brachytx source, Iodine 125	1718	Brachytx source, Iodine 125	H
C1719	Brachytx sour, Non-HDR Ir-192	1719	Brachytx source, Non-HDR Ir-192	H
C1720	Brachytx source, Paladium 103	1720	Brachytx source, Paladium 103	H
C2616	Brachytx source, Yttrium-90	2616	Brachytx source, Yttrium-90	H
C2632	Brachytx solution, I–125, per mCi	2632	Brachytx sol, I–125, per mCi	H
C2633	Brachytx source, Cesium-131	2633	Brachytx source, Cesium-131	H
C2632	Brachytx sol, I–125, per mCi	2632	Brachytx sol, I–125, per mCi	H

As indicated in Table 4, brachytherapy source in HCPCS code C1717 will be paid based on the hospital's charge reduced to cost beginning January 1, 2004. Prior to enactment of DIMA, these sources were paid as packaged services in APC 0313. As a result of the requirement to pay for C1717 separately, we are adjusting the payment rate for APC 0313 to reflect the unpackaging of the brachytherapy source. The new rate is listed in Addendum A.

Section 1833(t)(2)(H) is added by section 621(b)(2)(C) of DIMA, mandating the creation of separate groups of covered OPD services that classify brachytherapy devices separately from other services or groups of services. The additional groups shall be created in a manner reflecting the number, isotope and radioactive intensity of the devices of brachytherapy furnished, including separate groups for palladium-103 and iodine-125.

We invite the public to submit recommendations for new codes to describe brachytherapy sources in a manner reflecting the number, radioisotope, and radioactive intensity of the sources. We request that commenting parties provide a detailed rationale to support recommended new codes. We will propose appropriate changes in codes for brachytherapy sources in the 2005 OPPS update.

Continuation of Transitional Corridor Payments for CY 2004

Since the inception of the OPPS, providers have been eligible to receive additional transitional payments if the payments they received under the OPPS were less than the payments they would have received for the same services under the payment system in effect before the OPPS. Under 1833(t)(7) of the Act, most hospitals that realize lower payments under the OPPS received transitional corridor payments based on a percent of the decrease in payments. However, rural hospitals having 100 or fewer beds, as well as cancer hospitals and children's hospitals described in section 1886(d)(1)(B)(iii) and (v) of the Act, were held harmless under this provision and paid the full amount of the decrease in payments under the OPPS.

Transitional corridor payments were intended to be temporary payments to ease providers' transition from the prior cost-based payment system to the prospective payment system. In accordance with section 1833(t)(7) of the Act, transitional corridor payments were to be eliminated January 1, 2004, for all providers other than cancer hospitals and children's hospitals. Cancer hospitals and children's hospitals are held harmless permanently under the transitional corridor provisions of the statute.

Section 411 of the DIMA amends section 1833(t)(7) of the Act to provide that hold harmless transitional corridor payments will continue through December 31, 2005 for rural hospitals having 100 or fewer beds.

Section 411 of the DIMA further amends section 1833(t)(7) of the Act to provide that hold harmless transitional corridor payments shall apply to sole community hospitals, as defined in section 1886(d)(5)(D)(iii) of the Act, which are located in rural areas, with respect to services furnished during cost reporting periods beginning on or after January 1, 2004, and continuing through December 31, 2005. For purposes of this provision, a sole community hospital's location in a rural area will be determined as it is under the inpatient PPS, in 42 CFR 412.63(b).

II. Provisions of the Interim Final Rule With Comment Period

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (DIMA), enacted December 8, 2003 makes changes to the Social Security Act (the Act) relating to calendar year 2004 payments under the Hospital Outpatient Prospective Payment System. This interim final rule with comment period implements changes resulting from enactment of the DIMA that are effective January 1, 2004, as follows:

Transitional Corridor Payments Extended

Hold harmless transitional corridor payments are continued through December 31, 2005 for small rural hospitals having 100 or fewer beds. In addition, hold-harmless transitional corridor provisions shall apply to sole community hospitals as defined in section 1886(d)(5)(D)(iii) of the Act with respect to cost reporting periods beginning on or after January 1, 2004 and will continue through December 31, 2005.

Payment for ''Specified Covered Outpatient Drugs''

Separately paid radiopharmaceutical agents and drugs or biologicals that had transitional pass-through status on or before December 31, 2002, are classified into 3 categories: innovator multiple source drugs; noninnovator multiple source drugs; and sole source drugs. Payment levels based on the reference average wholesale price as of May 1, 2003 are specified for each category.

Payment for Pass-Through Drugs

Drugs and biologicals furnished during 2004 for which pass-through payment was first made on or after January 1, 2003 (which removes them from application of section 621 of the

DIMA) and were approved by the FDA for marketing as of April 1, 2003, will be paid 85 percent of AWP pursuant to section 1842(o)(1)(B) and 1842(o)(4)(A), unless sections 1842(o)(4)(B), (C) or (D) apply.

Certain drugs, biologicals and radiopharmaceutical agents that are pass-through drugs in 2004 and that also meet the definition of ''specified covered outpatient drugs'', except as otherwise specified, are paid 88 percent of the reference AWP. Those drugs, biologicals, and radiopharmaceutical agents remain pass-through drugs and all policies that apply to them as pass-through drugs continue to apply.

Exclude Separately Payable Drugs and Biologicals From Outlier Payments

Separately paid drugs and biologicals are excluded from outlier payments.

Brachytherapy Sources Are To Be Paid Separately

All devices of brachytherapy consisting of a seed or seeds (or radioactive source) are paid based on the hospital's charge for the device adjusted to cost. All such brachytherapy sources are excluded from outlier payments.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Waiver of Notice of Proposed Rulemaking and the 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with 5 U.S.C. section 553(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

In this case, we believe that it is in the public interest to comply with the statutory requirement to implement these changes effective January 1, 2004. Failure to meet this deadline would cause a delay in payment increases for many drugs and biologicals and brachytherapy sources.

Section 1871 of the Act also provides for publication of a notice of proposed rulemaking and opportunity for public comment before CMS issues a final rule. However, section 1871(b)(2)(B) provides an exception when a law establishes a specific deadline for implementation of a provision and the deadline is less than 150 days after the law's date of enactment. The DIMA was enacted by the Congress on November 25, 2003 and signed into law by the President on December 8, 2003. The provisions of this rule that amend the Medicare hospital outpatient prospective payment system are required to be implemented January 1, 2004. Therefore, these provisions are subject to waiver of proposed rulemaking in accordance with section 1871(b)(2)(B) of the Act.

In addition, we ordinarily provide a 30-day delay in the effective date of the provisions of an interim final rule. Section 553(d) of the APA (5 U.S.C. section 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

In this case, we believe that it is in the public interest to comply with the statutory requirement to implement these changes effective January 1, 2004 without the 30-day delay in effective date. Failure to meet this deadline would cause a delay in payment increases for many drugs and biologicals and brachytherapy sources.

In addition to the APA requirements, section 1871(e)(1), as amended by section 903(b)(1) of DIMA also requires that a substantive change in a regulation shall not become effective before the end of the 30-day period that begins on the date that the Secretary has issued or published the substantive change. Section 903(b)(1) provides an exception to the requirement of a 30-day delay in the effective date if the Secretary finds that the waiver of such 30-day period is necessary to comply with statutory requirements or that the application of such 30-day period is contrary to the public interest.

For purposes of DIMA, we believe that it is in the public interest to comply with the statutory requirement to implement these changes effective January 1, 2004 without the 30-day delay in effective date for the same reasons stated above—failure to meet this deadline would cause a delay in payment increases for many drugs and biologicals and brachytherapy sources. In addition, we find it is necessary to waive the 30-day delay period in order to timely comply with the statutory requirement that new payment rates be effective on January 1, 2004. We are providing a 60-day public comment period.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We estimate the effects of the provisions that will be implemented by this final rule will result in expenditures exceeding $100 million in any 1 year. Our Office of the Actuary estimates that the total change in expenditures under the OPPS for CY 2004 as a result of the changes made by DIMA to be approximately $150 million. Therefore, this final rule with comment is an economically significant rule under Executive Order 12866, and a major rule under 5 U.S.C. 804(2). Therefore the discussion below, in combination with the rest of this final rule constitutes a regulatory impact analysis. The RFA requires agencies to analyze options for regulatory relief of small businesses. However a regulatory flexibility analysis is not required for an interim final rule because no proposed rule is being issued.

Therefore the discussion below constitutes a regulatory impact analysis but no regulatory flexibility analysis is provided.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This interim final rule will not mandate any requirements for State, local or tribal governments. This interim final rule will not impose unfunded mandates on the private sector of more than $110 million dollars.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this interim final rule in accordance with Executive Order 13132, Federalism, and have determined that it will not have an impact on the rights, roles, and responsibilities of State, local or tribal governments.

B. Anticipated Effects of Changes in This Interim Final Rule and Alternatives Considered for Each Change

All of the changes made in this interim final rule with comment are required by DIMA. We are required under section 621 of the DIMA to revise payments for certain drugs and biologicals and for radiopharmaceuticals. We are also required under section 621 of the DIMA to pay for brachytherapy sources on the basis of application of a cost to charge ratio to the charges for the sources. In addition, we are required under section 621 of the DIMA to continue transitional outpatient payment for certain hospitals.

Impact on Drugs and Biologicals That Will Be Paid Under Pass-Through Provisions in 2004

Four of the drugs and biologicals that will be paid under pass-through provisions in 2004 will be paid at 95 percent of AWP. Nine of the drugs and biologicals that will be paid under pass-through provisions in 2004 will be paid at 85 percent of AWP in 2004. This is a reduction of 10 percent of AWP compared to the payment that would have been made for these drugs and biologicals before passage of the DIMA.

As discussed previously in this rule, some pass-through drugs and biologicals also meet the criteria for ''specified covered outpatient drugs'' under 1833(t)(14) and, except as specified in this rule, will be paid 88 percent of the reference AWP. Notwithstanding the payment amount, however, they remain pass-through drugs.

Hospitals that provide drugs paid at 85 percent of AWP will be paid less than they would have been paid absent passage of the new law.

It is unclear whether the reduction in payments for these drugs will have any effect on beneficiary access to them. Hospitals consider many factors when they determine whether they choose to provide the drugs and it is unclear whether the reduction in payment for Medicare will result in impaired access. However, reduction in the payment amounts for some drugs means that beneficiaries will have lower copayments for those drugs and that they, and complementary insurers who pay beneficiary cost sharing, will have reduced expenses. Hospitals, however, will clearly be paid reduced amounts by Medicare for these drugs compared to the amounts that would be paid had the statute not imposed these changes. Manufacturers and distributors of the pass-through drugs that will be paid at 85 percent of AWP will be under increased pressure to reduce the price of the drugs since the hospitals to which they sell the items will be paid lower amounts by Medicare for them when used in hospital outpatient departments.

We considered setting payment at 85 percent for pass-through drugs that also meet the definition of ''specified covered outpatient drugs'' as allowed in the cross reference from 1833(t)(6) to 1842(o). However, given that the drugs are eligible for payment under both sets of criteria, we chose to increase their payment to 88 percent of reference AWP, except as otherwise specified. We believe that this choice will result in the least possible disruption to beneficiary access to these drugs.

We considered no alternatives with regard to payment for pass-through drugs that did not meet the definition of ''specified covered outpatient drugs'' because the law provides only one payment methodology for these drugs.

Impact of Changes for ''Specified Covered Outpatient Drugs''

Radiopharmaceutical agents and drugs or biologicals for which payment was made on a pass-through basis on or before December 31, 2002, are now to be paid under section 1833(t)(14) of the Act as added by DIMA. Under these provisions, radiopharmaceuticals and drugs and biologicals that meet the criteria, are paid amounts that must be limited as specified in the law. Specifically, items that meet the definition of sole source drugs must be paid no less than 88 percent of reference AWP nor more than 95 percent of reference AWP. Items that meet the definition of innovator multiple source drugs must be paid no more than 68 percent of AWP and items that meet the definition of noninnovator multiple source drugs must be paid no more than 46 percent of AWP.

As described previously, these categories are defined in section 1927(k)(7) of the Act. That section classifies drugs, biologicals and radiopharmaceuticals for purposes of the Medicaid drug rebate program. CMS has a database in which these items are categorized to which we looked to seek the classification of each drug, biological and radiopharmaceutical paid under pass-through provisions before December 31, 2002. Table 1 shows those items that we believe meet the definition of sole source drug. Table 2 shows those items for which it is not clear to us whether the item should be classified as a sole source drug or as both an innovator multiple source and a noninnovator multiple source drug and which we will pay as noninnovator multiple source drugs until we receive comments and determine the classification into which the drug falls. Paying for those drugs with questionable classification as noninnovator multiple source drugs allows payment to be made to hospitals for these drugs when they are furnished and also protects hospitals from incurring overpayments. Once we review the public comments and establish the correct classification and codes for the billing of innovator multiple source drugs, hospitals may subject adjustment bills to be paid the additional amounts due.

We will pay the 121 drugs in Table 1 at the amounts shown, as previously discussed. Six of these drugs will have no payment change from the payment announced in the November 7, 2003 final rule. Six of these drugs will receive decreases in payment compared to the final rule because the payment established in the November 7, 2003 final rule exceeded 95 percent of the reference AWP. The payment amounts for these drugs are now set at 95 percent of the reference AWP in accordance with the law. One hundred nine of these drugs will receive increases in payment compared to the final rule because the payment established in the November 7, 2003 final rule was less than 88 percent of reference AWP. The payment amounts for these drugs, biologicals and radiopharmaceuticals is now set at 88 percent of the reference AWP.

We will temporarily pay the 52 drugs in Table 2 at the amounts shown, as previously discussed. Thirteen of these items will be paid the amount that was published in the November 7, 2003 final rule. Thirty-eight of these items will receive payment decreases. One of these items did not have a reference AWP under the SDP and will require further research to determine the correct payment amount. Until we determine a reference AWP for this item it will be paid at the amount that was published in the November 7, 2003 final rule.

It is unclear what the final overall impact of these changes will be because we are, as yet, unable to determine into which categories 52 items in dispute will fall. Moreover, once they are categorized, we do not anticipate that we will know the frequency with which hospitals will use the innovator multiple source drug versus the noninnovator multiple source drug in the outpatient department. Moreover, it is not clear to what extent hospitals may change their behavior with regard to which type of a drug they choose to purchase and whether their purchasing decisions will be affected by whether they furnish the item to hospital outpatient departments or inpatient departments.

We considered whether to classify the 52 items with questionable category assignment as both innovator multiple source and noninnovator multiple source drugs and to create HCPCS codes to be used when innovator multiple source drugs are administered. However, we believe that public comment is necessary to determine the correct classification of these items. Similarly, we believe that, given the burden the law imposes on hospitals for reporting drugs by the category into which they fall, it was important to receive public comment regarding whether new codes should be created and regarding ways we can reduce the reporting burden on hospitals. Hence, until we receive and review the comments, we will not be able to assess the impact of these requirements of the law.

We do acknowledge, however, that for the 52 drugs that are not sole source drugs, the temporary payments to hospitals at the noninnovator multiple source drug rate will be less than the payment that would have been made under the November 7, 2003 final rule. For those drugs that are sole source drugs, the payment will increase in most cases.

Hospitals that provide sole source drugs will be paid more for these drugs under these provisions than they would have been paid before enactment of the DIMA. Hospitals that provide innovator multiple source drugs and noninnovator multiple source drugs will be paid less for these items than they would have been before enactment of the DIMA. This may encourage use of sole source drugs and discourage use of multiple source drugs. As a result, beneficiaries may have greater access to sole source drugs but will also incur greater copayments because those payment rates are higher than they would have been before enactment of DIMA. In turn, there may be increased payment by complementary insurers for these items. Manufacturers of sole source drugs may realize increased sales and manufacturers of generic drugs may see reduced sales.

We considered whether to permit a drug that is classified by AMP as a sole source drug, an innovator multiple source drug and a noninnovator multiple source drug to be paid under all three classifications. We decided not to pay a drug as a sole source drug if it is also a multiple source drug for reasons described previously in this interim final rule. We considered no alternatives because the law is quite specific with regard to the classification of drugs and the payment rules that apply to each class of drug.

Impact of Cost-Based Payment for Sources of Brachytherapy

The law provides that sources of brachytherapy will be paid an amount equal to the hospital's charge for the source adjusted by the applicable cost to charge ratio. It is unclear whether this will result in an increase or decrease in payment for brachytherapy sources. However, removing the brachytherapy source from packaged payment for the services with which it is furnished removes incentives for using the least number of sources needed for the therapeutic purpose. There is no evidence that packaged payment for brachytherapy sources resulted in inappropriately low utilization of brachytherapy, nor that separate payment will result in any change in availability of the service. We are unable to estimate the impact of this change on utilization and program payment.

We considered no alternatives to this policy because the statute was specific with regard to how payment for brachytherapy sources must be made.

Impact of Continuation of Transitional Outpatient Payments for Certain Hospitals

The law provides that transitional outpatient payments must continue for rural hospitals with 100 or fewer beds and be provided for sole community hospitals in rural areas through December 31, 2005. There are approximately 600 sole community hospitals and approximately 1150 rural hospitals with 100 beds or fewer that may be affected by this provision. These hospitals will continue to receive transitional corridor payments in addition to the payments they will receive under OPPS. These payments should continue to strengthen the ability of these hospitals to furnish services to beneficiaries who reside in the areas served by these hospitals. Beneficiaries should be better assured of access to services in these hospitals. These hospitals will be assured of payment for the reasonable costs of providing outpatient services.

We considered no alternatives because the statute is quite directive with regard to the extension of hold harmless protection to these hospitals.

C. Conclusion

We have prepared the analysis above because we have determined that this interim final rule will have a significant economic impact. In accordance with the provisions of Executive Order 12866, this interim final rule was reviewed by the Office of Management and Budget.

Publication of Addenda

The addenda included in this interim final rule, Addenda A and D1 replace the addenda in the November 7, 2003 **Federal Register** (68 FR 63478). The revised addenda reflect changes required by the DIMA as well as corrections to minor errors contained in the addenda published November 7, 2003.

In addition to the addenda included here, we will post the updated Addenda B and C on our Web site at *http://www.cms.hhs.gov/regulations/hopps/*.

List of Subjects in 42 CFR Part 419

Hospitals, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

■ 1. The authority citation for part 419 continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

Subpart C—Basic Methodology for Determining Prospective Payment Rates for Hospital Outpatient Services

■ 2. Section 419.32 is amended by revising paragraph (d) to read as follows:

§ 419.32 Calculation of prospective payment rates for hospital outpatient services.

* * * * *

(d) *Budget neutrality.* (1) CMS adjusts the conversion factor as needed to ensure that updates and adjustments under § 419.50(a) are budget neutral.

(2) In determining adjustments for 2004 and 2005, CMS will not take into account any additional expenditures per section 1833(t)(14) of the Act that would not have been made but for enactment of section 621 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Subpart D—Payments to Hospitals

■ 3. Section § 419.43 is amended as follows:

■ A. Paragraph (d)(1) introductory text is revised.

■ B. Paragraph (e) is revised.

■ C. New paragraph (f) is added.

The revisions and additions read as follows:

§ 419.43 Adjustments to national program payments and beneficiary copayment amounts.

* * * * *

(d) *Outlier adjustment*—(1) *General rule.* Subject to paragraph (d)(4) of this section, CMS provides for an additional payment for a hospital outpatient service (or group of services) not excluded under paragraph (f) of this section for which a hospital's charges, adjusted to cost, exceed the following:

* * * * *

(e) *Budget neutrality.* CMS establishes payment under paragraph (d) of this section in a budget-neutral manner excluding services and groups specified in paragraph (f) of this section.

(f) *Excluded services and groups.* Drugs and biologicals that are paid under a separate APC and devices of brachytherapy, consisting of a seed or seeds (including a radioactive source) are excluded from qualification for outlier payments.

Subpart G—Transitional Pass-Through Payments

■ 4. Section 419.64 is amended by revising paragraph (d).

§ 419.64 Transitional pass-through payments: Drugs and biologicals.

* * * * *

(d) *Amount of pass-through payment.* (1) Subject to any reduction determined under § 419.62(b), the pass-through payment for a drug or biological as specified in section 1842(o)(1)(A) and (o)(1)(D)(i) of the Act is 95 percent of the average wholesale price of the drug or biological minus the portion of the APC payment CMS determines is associated with the drug or biological.

(2) Subject to any reduction determined under § 419.62(b), the pass-through payment for a drug or biological as specified in section 1842(o)(1)(B) and (o)(1)(E)(i) of the Act is 85 percent of the average wholesale price, determined as of April 1, 2003, of the drug or biological minus the portion of the APC payment CMS determines is associated with the drug or biological.

Subpart H—Transitional Corridors

■ 5. Section 419.70 is amended as follows:

■ A. Paragraph (d)(1) is amended by removing ''2004'' and adding ''2006'' in its place.

■ B. A new paragraph (d)(3) is added to read as follows:

§ 419.70 Transitional adjustment to limit decline and payment.

* * * * *

(d) * * *

(3) *Temporary treatment for sole community hospitals located in rural areas.* For covered hospital outpatient services furnished during cost reporting periods beginning on or after January 1, 2004, and continuing through December 31, 2005, for which the prospective payment system amount is less than the pre-BBA amount, the amount of payment under this part is increased by the amount of that difference if the hospital—

(i) Is a sole community hospital, under § 412.92 of this chapter; and

(ii) Is located in a rural area as defined in § 412.63(b) of this chapter or is treated as being located in a rural area under section 1886(d)(8)(E) of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 23, 2003.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: December 23, 2003.

Tommy G. Thompson,

Secretary.

Note: The following addenda will not appear in the Code of Federal Regulations.

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0001	Level I Photochemotherapy	S	0.4237	$23.12	$7.09	$4.62
0002	Level I Fine Needle Biopsy/Aspiration	T	0.8083	$44.10		$8.82
0003	Bone Marrow Biopsy/Aspiration	T	2.3229	$126.74		$25.35
0004	Level I Needle Biopsy/ Aspiration Except Bone Marrow	T	1.5882	$86.65	$22.36	$17.33
0005	Level II Needle Biopsy/Aspiration Except Bone Marrow	T	3.2698	$178.40	$71.59	$35.68
0006	Level I Incision & Drainage	T	1.6527	$90.17	$23.26	$18.03
0007	Level II Incision & Drainage	T	11.8633	$647.27		$129.45
0008	Level III Incision and Drainage	T	19.4831	$1,063.02		$212.60
0009	Nail Procedures	T	0.6652	$36.29	$8.34	$7.26
0010	Level I Destruction of Lesion	T	0.6480	$35.36	$10.08	$7.07
0011	Level II Destruction of Lesion	T	2.2217	$121.22	$27.88	$24.24
0012	Level I Debridement & Destruction	T	0.7612	$41.53	$11.18	$8.31
0013	Level II Debridement & Destruction	T	1.1302	$61.66	$14.20	$12.33
0015	Level III Debridement & Destruction	T	1.5968	$87.12	$20.35	$17.42
0016	Level IV Debridement & Destruction	T	2.5724	$140.35	$57.31	$28.07
0017	Level VI Debridement & Destruction	T	16.3697	$893.15	$227.84	$178.63
0018	Biopsy of Skin/Puncture of Lesion	T	0.9178	$50.08	$16.04	$10.02

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0019	Level I Excision/ Biopsy	T	3.9493	$215.48	$71.87	$43.10
0020	Level II Excision/ Biopsy	T	7.0842	$386.52	$113.25	$77.30
0021	Level III Excision/ Biopsy	T	14.3594	$783.46	$219.48	$156.69
0022	Level IV Excision/ Biopsy	T	18.7932	$1,025.38	$354.45	$205.08
0023	Exploration Penetrating Wound	T	2.8141	$153.54	$40.37	$30.71
0024	Level I Skin Repair	T	1.6850	$91.94	$33.10	$18.39
0025	Level II Skin Repair	T	5.1912	$283.24	$107.00	$56.65
0027	Level IV Skin Repair	T	15.8990	$867.47	$329.72	$173.49
0028	Level I Breast Surgery	T	17.6584	$963.46	$303.74	$192.69
0029	Level II Breast Surgery	T	30.1167	$1,643.20	$632.64	$328.64
0030	Level III Breast Surgery	T	37.3083	$2,035.58	$763.55	$407.12
0032	Insertion of Central Venous/Arterial Catheter	T	11.4907	$626.94		$125.39
0033	Partial Hospitalization	P	5.2569	$286.82		$57.36
0035	Placement of Arterial or Central Venous Catheter	T	0.1691	$9.23	$2.79	$1.85
0036	Level II Fine Needle Biopsy/Aspiration	T	1.5170	$82.77		$16.55
0037	Level III Needle Biopsy/Aspiration Except Bone Marrow	T	9.8921	$539.72	$237.45	$107.94
0039	Implantation of Neurostimulator	S	235.1866	$12,832.02		$2,566.40
0040	Level II Implantation of Neurostimulator Electrodes	S	52.1002	$2,842.64		$568.53
0041	Level I Arthroscopy	T	27.3819	$1,493.98		$298.80
0042	Level II Arthroscopy	T	43.0808	$2,350.53	$804.74	$470.11
0043	Closed Treatment Fracture Finger/Toe/Trunk	T	1.9074	$104.07		$20.81
0045	Bone/Joint Manipulation Under Anesthesia	T	13.5889	$741.42	$268.47	$148.28
0046	Open/Percutaneous Treatment Fracture or Dislocation	T	32.5581	$1,776.40	$535.76	$355.28
0047	Arthroplasty without Prosthesis	T	29.9582	$1,634.55	$537.03	$326.91
0048	Arthroplasty with Prosthesis	T	51.4609	$2,807.76	$695.60	$561.55
0049	Level I Musculoskeletal Procedures Except Hand and Foot.	T	19.6046	$1,069.65		$213.93
0050	Level II Musculoskeletal Procedures Except Hand and Foot.	T	24.8651	$1,356.66		$271.33
0051	Level III Musculoskeletal Procedures Except Hand and Foot.	T	34.5144	$1,883.14		$376.63
0052	Level IV Musculoskeletal Procedures Except Hand and Foot.	T	42.7126	$2,330.44		$466.09
0053	Level I Hand Musculoskeletal Procedures	T	14.8831	$812.04	$253.49	$162.41
0054	Level II Hand Musculoskeletal Procedures	T	24.2456	$1,322.86		$264.57
0055	Level I Foot Musculoskeletal Procedures	T	18.7205	$1,021.41	$355.34	$204.28
0056	Level II Foot Musculoskeletal Procedures	T	25.3930	$1,385.47	$405.81	$277.09
0057	Bunion Procedures	T	25.5035	$1,391.50	$475.91	$278.30
0058	Level I Strapping and Cast Application	S	1.0931	$59.64		$11.93
0060	Manipulation Therapy	S	0.2788	$15.21		$3.04
0068	CPAP Initiation	S	1.0807	$58.96	$29.48	$11.79
0069	Thoracoscopy	T	28.9392	$1,578.95	$591.64	$315.79
0070	Thoracentesis/Lavage Procedures	T	3.0717	$167.60		$33.52
0071	Level I Endoscopy Upper Airway	T	0.8799	$48.01	$12.89	$9.60
0072	Level II Endoscopy Upper Airway	T	1.7613	$96.10	$26.68	$19.22
0073	Level III Endoscopy Upper Airway	T	3.4541	$188.46	$73.38	$37.69
0074	Level IV Endoscopy Upper Airway	T	13.9480	$761.02	$295.70	$152.20
0075	Level V Endoscopy Upper Airway	T	20.3815	$1,112.04	$445.92	$222.41
0076	Level I Endoscopy Lower Airway	T	9.2346	$503.85	$189.82	$100.77
0077	Level I Pulmonary Treatment	S	0.2837	$15.48	$7.74	$3.10
0078	Level II Pulmonary Treatment	S	0.7917	$43.20	$14.55	$8.64
0079	Ventilation Initiation and Management	S	2.1494	$117.27		$23.45
0080	Diagnostic Cardiac Catheterization	T	36.0160	$1,965.07	$838.92	$393.01
0081	Non-Coronary Angioplasty or Atherectomy	T	35.0285	$1,911.19		$382.24
0082	Coronary Atherectomy	T	110.2196	$6,013.69	$1,293.59	$1,202.74
0083	Coronary Angioplasty and Percutaneous Valvuloplasty	T	59.2047	$3,230.27		$646.05
0084	Level I Electrophysiologic Evaluation	S	10.5226	$574.12		$114.82
0085	Level II Electrophysiologic Evaluation	T	35.4126	$1,932.15	$426.25	$386.43
0086	Ablate Heart Dysrhythm Focus	T	44.9389	$2,451.91	$833.33	$490.38
0087	Cardiac Electrophysiologic Recording/Mapping	T	39.8161	$2,172.41		$434.48
0088	Thrombectomy	T	34.6942	$1,892.95	$655.22	$378.59
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes.	T	117.1896	$6,393.98	$1,722.59	$1,278.80
0090	Insertion/Replacement of Pacemaker Pulse Generator	T	96.8284	$5,283.05	$1,651.45	$1,056.61
0091	Level II Vascular Ligation	T	28.8326	$1,573.14	$348.23	$314.63
0092	Level I Vascular Ligation	T	25.0959	$1,369.26	$505.37	$273.85
0093	Vascular Reconstruction/Fistula Repair without Device	T	21.3104	$1,162.72	$277.34	$232.54
0094	Level I Resuscitation and Cardioversion	S	2.6345	$143.74	$48.58	$28.75
0095	Cardiac Rehabilitation	S	0.5994	$32.70	$16.35	$6.54

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0096	Non-Invasive Vascular Studies	S	1.7176	$93.71	$46.85	$18.74
0097	Cardiac and Ambulatory Blood Pressure Monitoring	X	1.0635	$58.03	$23.80	$11.61
0098	Injection of Sclerosing Solution	T	1.0729	$58.54	$14.06	$11.71
0099	Electrocardiograms	S	0.3703	$20.20		$4.04
0100	Cardiac Stress Tests	X	1.5862	$86.54	$41.44	$17.31
0101	Tilt Table Evaluation	S	4.4040	$240.29	$105.27	$48.06
0103	Miscellaneous Vascular Procedures	T	11.6202	$634.01	$223.63	$126.80
0104	Transcatheter Placement of Intracoronary Stents	T	82.6713	$4,510.63		$902.13
0105	Revision/Removal of Pacemakers, AICD, or Vascular	T	19.1898	$1,047.01	$370.40	$209.40
0106	Insertion/Replacement/Repair of Pacemaker and/or Electrodes.	T	58.9719	$3,217.57		$643.51
0107	Insertion of Cardioverter-Defibrillator	T	337.1304	$18,394.17	$3,699.14	$3,678.83
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.	T	452.6995	$24,699.74		$4,939.95
0109	Removal of Implanted Devices	T	7.4705	$407.60	$131.49	$81.52
0110	Transfusion	S	3.6718	$200.34		$40.07
0111	Blood Product Exchange	S	13.1719	$718.67	$200.18	$143.73
0112	Apheresis, Photopheresis, and Plasmapheresis	S	37.5832	$2,050.58	$612.47	$410.12
0113	Excision Lymphatic System	T	19.9322	$1,087.52		$217.50
0114	Thyroid/Lymphadenectomy Procedures	T	37.5963	$2,051.29	$485.91	$410.26
0115	Cannula/Access Device Procedures	T	25.6437	$1,399.15	$459.35	$279.83
0116	Chemotherapy Administration by Other Technique Except Infusion.	S	0.7996	$43.63		$8.73
0117	Chemotherapy Administration by Infusion Only	S	3.0360	$165.65	$42.54	$33.13
0119	Implantation of Infusion Pump	T	134.7194	$7,350.43		$1,470.09
0120	Infusion Therapy Except Chemotherapy	T	1.9114	$104.29	$28.21	$20.86
0121	Level I Tube changes and Repositioning	T	2.1114	$115.20	$43.80	$23.04
0122	Level II Tube changes and Repositioning	T	8.8621	$483.53	$99.16	$96.71
0123	Bone Marrow Harvesting and Bone Marrow/Stem Cell Transplant.	S	6.1499	$335.54		$67.11
0124	Revision of Implanted Infusion Pump	T	23.8050	$1,298.82		$259.76
0125	Refilling of Infusion Pump	T	2.1606	$117.88		$23.58
0130	Level I Laparoscopy	T	32.7724	$1,788.09	$659.53	$357.62
0131	Level II Laparoscopy	T	40.8064	$2,226.44	$1,001.89	$445.29
0132	Level III Laparoscopy	T	57.2045	$3,121.13	$1,239.22	$624.23
0140	Esophageal Dilation without Endoscopy	T	6.4525	$352.05	$107.24	$70.41
0141	Upper GI Procedures	T	7.8206	$426.70	$143.38	$85.34
0142	Small Intestine Endoscopy	T	8.7959	$479.91	$152.78	$95.98
0143	Lower GI Endoscopy	T	8.2957	$452.62	$186.06	$90.52
0146	Level I Sigmoidoscopy	T	3.9826	$217.29	$64.40	$43.46
0147	Level II Sigmoidoscopy	T	7.6808	$419.07		$83.81
0148	Level I Anal/Rectal Procedure	T	3.8320	$209.08	$63.38	$41.82
0149	Level III Anal/Rectal Procedure	T	17.1425	$935.31	$293.06	$187.06
0150	Level IV Anal/Rectal Procedure	T	22.1919	$1,210.81	$437.12	$242.16
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP).	T	17.9462	$979.16	$245.46	$195.83
0152	Percutaneous Abdominal and Biliary Procedures	T	9.1474	$499.09	$125.28	$99.82
0153	Peritoneal and Abdominal Procedures	T	20.8723	$1,138.81	$410.87	$227.76
0154	Hernia/Hydrocele Procedures	T	26.9636	$1,471.16	$464.85	$294.23
0155	Level II Anal/Rectal Procedure	T	10.0809	$550.02	$188.89	$110.00
0156	Level II Urinary and Anal Procedures	T	2.4747	$135.02	$40.52	$27.00
0157	Colorectal Cancer Screening: Barium Enema	S	2.5693	$140.18		$28.04
0158	Colorectal Cancer Screening: Colonoscopy	T	7.4244	$405.08		$101.27
0159	Colorectal Cancer Screening: Flexible Sigmoidoscopy	S	2.7823	$151.81		$37.95
0160	Level I Cystourethroscopy and other Genitourinary Procedures.	T	6.8801	$375.39	$105.06	$75.08
0161	Level II Cystourethroscopy and other Genitourinary Procedures.	T	16.8407	$918.85	$249.36	$183.77
0162	Level III Cystourethroscopy and other Genitourinary Procedures.	T	21.9098	$1,195.42		$239.08
0163	Level IV Cystourethroscopy and other Genitourinary Procedures.	T	33.8805	$1,848.55		$369.71
0164	Level I Urinary and Anal Procedures	T	1.2021	$65.59	$17.59	$13.12
0165	Level III Urinary and Anal Procedures	T	14.6838	$801.16		$160.23
0166	Level I Urethral Procedures	T	16.7918	$916.18	$218.73	$183.24
0167	Level III Urethral Procedures	T	30.0186	$1,637.84	$555.84	$327.57
0168	Level II Urethral Procedures	T	30.0147	$1,637.63	$405.60	$327.53
0169	Lithotripsy	T	45.1150	$2,461.52	$1,115.69	$492.30
0170	Dialysis	S	5.9678	$325.61		$65.12

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0180	Circumcision	T	18.6176	$1,015.79	$304.87	$203.16
0181	Penile Procedures	T	29.4217	$1,605.28	$621.82	$321.06
0183	Testes/Epididymis Procedures	T	21.6724	$1,182.47		$236.49
0184	Prostate Biopsy	T	3.8995	$212.76	$96.27	$42.55
0187	Miscellaneous Placement/Repositioning	X	4.4288	$241.64	$90.71	$48.33
0188	Level II Female Reproductive Proc	T	1.1365	$62.01		$12.40
0189	Level III Female Reproductive Proc	T	1.4232	$77.65	$18.09	$15.53
0190	Level I Hysteroscopy	T	19.6922	$1,074.43	$424.28	$214.89
0191	Level I Female Reproductive Proc	T	0.1853	$10.11	$2.93	$2.02
0192	Level IV Female Reproductive Proc	T	2.7121	$147.97	$39.11	$29.59
0193	Level V Female Reproductive Proc	T	15.0453	$820.89	$171.13	$164.18
0194	Level VIII Female Reproductive Proc	T	18.4286	$1,005.48	$397.84	$201.10
0195	Level IX Female Reproductive Proc	T	25.6950	$1,401.94	$483.80	$280.39
0196	Dilation and Curettage	T	16.1219	$879.63	$338.23	$175.93
0197	Infertility Procedures	T	4.8280	$263.42		$52.68
0198	Pregnancy and Neonatal Care Procedures	T	1.3578	$74.08	$32.19	$14.82
0199	Obstetrical Care Service	T	17.2831	$942.98		$188.60
0200	Level VII Female Reproductive Proc	T	17.9920	$981.66	$307.83	$196.33
0201	Level VI Female Reproductive Proc	T	16.8660	$920.23	$329.65	$184.05
0202	Level X Female Reproductive Proc	T	38.9821	$2,126.90	$1,042.18	$425.38
0203	Level IV Nerve Injections	T	11.5969	$632.74	$276.76	$126.55
0204	Level I Nerve Injections	T	2.1711	$118.46	$40.13	$23.69
0206	Level II Nerve Injections	T	5.2875	$288.49	$75.55	$57.70
0207	Level III Nerve Injections	T	6.4554	$352.21	$123.69	$70.44
0208	Laminotomies and Laminectomies	T	40.2830	$2,197.88		$439.58
0209	Extended EEG Studies and Sleep Studies, Level II	S	11.5435	$629.82	$280.58	$125.96
0212	Nervous System Injections	T	2.9739	$162.26	$74.67	$32.45
0213	Extended EEG Studies and Sleep Studies, Level I	S	2.9055	$158.53	$65.74	$31.71
0214	Electroencephalogram	S	2.2176	$120.99	$58.12	$24.20
0215	Level I Nerve and Muscle Tests	S	0.6457	$35.23	$15.76	$7.05
0216	Level III Nerve and Muscle Tests	S	2.8535	$155.69	$67.98	$31.14
0218	Level II Nerve and Muscle Tests	S	1.1404	$62.22		$12.44
0220	Level I Nerve Procedures	T	16.5554	$903.28		$180.66
0221	Level II Nerve Procedures	T	24.8875	$1,357.89	$463.62	$271.58
0222	Implantation of Neurological Device	T	232.2024	$12,669.20		$2,533.84
0223	Implantation or Revision of Pain Management Catheter	T	26.7610	$1,460.11		$292.02
0224	Implantation of Reservoir/Pump/Shunt	T	34.1770	$1,864.73	$453.41	$372.95
0225	Level I Implementation of Neurostimulator Electrodes	S	206.0034	$11,239.75		$2,247.95
0226	Implantation of Drug Infusion Reservoir	T	136.2989	$7,436.60		$1,487.32
0227	Implantation of Drug Infusion Device	T	160.8363	$8,775.39		$1,755.08
0228	Creation of Lumbar Subarachnoid Shunt	T	52.2880	$2,852.89	$639.03	$570.58
0229	Transcatherter Placement of Intravascular Shunt	T	61.9895	$3,382.21	$771.23	$676.44
0230	Level I Eye Tests & Treatments	S	0.7619	$41.57	$14.97	$8.31
0231	Level III Eye Tests & Treatments	S	2.1883	$119.40	$50.94	$23.88
0232	Level I Anterior Segment Eye Procedures	T	4.9206	$268.47	$103.17	$53.69
0233	Level II Anterior Segment Eye Procedures	T	14.4205	$786.80	$266.33	$157.36
0234	Level III Anterior Segment Eye Procedures	T	21.4631	$1,171.05	$511.31	$234.21
0235	Level I Posterior Segment Eye Procedures	T	5.0749	$276.89	$72.04	$55.38
0236	Level II Posterior Segment Eye Procedures	T	18.6701	$1,018.66		$203.73
0237	Level III Posterior Segment Eye Procedures	T	34.1784	$1,864.81	$818.54	$372.96
0238	Level I Repair and Plastic Eye Procedures	T	3.1954	$174.34	$58.96	$34.87
0239	Level II Repair and Plastic Eye Procedures	T	6.1331	$334.63		$66.93
0240	Level III Repair and Plastic Eye Procedures	T	17.4535	$952.28	$315.31	$190.46
0241	Level IV Repair and Plastic Eye Procedures	T	22.1969	$1,211.09	$384.47	$242.22
0242	Level V Repair and Plastic Eye Procedures	T	29.4294	$1,605.70	$597.36	$321.14
0243	Strabismus/Muscle Procedures	T	21.7323	$1,185.74	$431.39	$237.15
0244	Corneal Transplant	T	37.6284	$2,053.04	$803.26	$410.61
0245	Level I Cataract Procedures without IOL Insert	T	12.2973	$670.95	$222.22	$134.19
0246	Cataract Procedures with IOL Insert	T	22.9755	$1,253.57	$495.96	$250.71
0247	Laser Eye Procedures Except Retinal	T	4.9482	$269.98	$104.31	$54.00
0248	Laser Retinal Procedures	T	4.8223	$263.11	$95.08	$52.62
0249	Level II Cataract Procedures without IOL Insert	T	27.7406	$1,513.55	$524.67	$302.71
0250	Nasal Cauterization/Packing	T	1.4697	$80.19	$28.07	$16.04
0251	Level I ENT Procedures	T	1.7880	$97.56		$19.51
0252	Level II ENT Procedures	T	6.4469	$351.75	$113.41	$70.35
0253	Level III ENT Procedures	T	15.2249	$830.69	$282.29	$166.14
0254	Level IV ENT Procedures	T	21.8901	$1,194.35	$321.35	$238.87
0256	Level V ENT Procedures	T	35.1548	$1,918.08		$383.62
0258	Tonsil and Adenoid Procedures	T	20.6265	$1,125.40	$437.25	$225.08

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0259	Level VI ENT Procedures	T	392.8622	$21,434.95	$9,394.83	$4,286.99
0260	Level I Plain Film Except Teeth	X	0.7802	$42.57	$21.28	$8.51
0261	Level II Plain Film Except Teeth Including Bone Density Measurement.	X	1.3176	$71.89		$14.38
0262	Plain Film of Teeth	X	0.7540	$41.14	$9.82	$8.23
0263	Level I Miscellaneous Radiology Procedures	X	2.1883	$119.40	$43.58	$23.88
0264	Level II Miscellaneous Radiology Procedures	X	3.0287	$165.25	$79.41	$33.05
0265	Level I Diagnostic Ultrasound Except Vascular	S	1.0289	$56.14	$28.07	$11.23
0266	Level II Diagnostic Ultrasound Except Vascular	S	1.6117	$87.94	$43.97	$17.59
0267	Level III Diagnostic Ultrasound Except Vascular	S	2.4586	$134.14	$65.52	$26.83
0268	Ultrasound Guidance Procedures	S	1.3081	$71.37		$14.27
0269	Level III Echocardiogram Except Transesophageal	S	3.2309	$176.28	$87.24	$35.26
0270	Transesophageal Echocardiogram	S	5.8546	$319.43	$146.79	$63.89
0271	Mammography	S	0.6499	$35.46	$16.80	$7.09
0272	Level I Fluoroscopy	X	1.4184	$77.39	$38.36	$15.48
0274	Myelography	S	3.5931	$196.04	$93.63	$39.21
0275	Arthrography	S	3.2775	$178.82	$69.09	$35.76
0276	Level I Digestive Radiology	S	1.5906	$86.78	$41.72	$17.36
0277	Level II Digestive Radiology	S	2.4444	$133.37	$60.47	$26.67
0278	Diagnostic Urography	S	2.7012	$147.38	$66.07	$29.48
0279	Level II Angiography and Venography except Extremity	S	10.7073	$584.20	$174.57	$116.84
0280	Level III Angiography and Venography except Extremity	S	19.1015	$1,042.20	$353.85	$208.44
0281	Venography of Extremity	S	6.6031	$360.27	$115.16	$72.05
0282	Miscellaneous Computerized Axial Tomography	S	1.6834	$91.85	$44.51	$18.37
0283	Computerized Axial Tomography with Contrast Material	S	4.6543	$253.94	$126.27	$50.79
0284	Magnetic Resonance Imaging and Magnetic Resonance Angiography with Contras.	S	7.1165	$388.28	$194.13	$77.66
0285	Myocardial Positron Emission Tomography (PET)	S	14.1508	$772.08	$334.45	$154.42
0287	Complex Venography	S	6.4923	$354.23	$111.33	$70.85
0288	Bone Density:Axial Skeleton	S	1.2726	$69.43		$13.89
0289	Needle Localization for Breast Biopsy	X	3.4900	$190.42	$44.80	$38.08
0296	Level I Therapeutic Radiologic Procedures	S	2.8635	$156.24	$69.20	$31.25
0297	Level II Therapeutic Radiologic Procedures	S	7.7145	$420.91	$172.51	$84.18
0299	Miscellaneous Radiation Treatment	S	5.7618	$314.37		$62.87
0300	Level I Radiation Therapy	S	1.4912	$81.36		$16.27
0301	Level II Radiation Therapy	S	2.1340	$116.43	$23.29	
0302	Level III Radiation Therapy	S	6.3268	$345.20	$130.77	$69.04
0303	Treatment Device Construction	X	2.8835	$157.33	$66.95	$31.47
0304	Level I Therapeutic Radiation Treatment Preparation	X	1.6742	$91.35	$41.52	$18.27
0305	Level II Therapeutic Radiation Treatment Preparation	X	3.6767	$200.60	$91.38	$40.12
0310	Level III Therapeutic Radiation Treatment Preparation	X	13.7165	$748.39	$325.27	$149.68
0312	Radioelement Applications	S	3.6637	$199.90		$39.98
0313	Brachytherapy	S	13.8073	$753.34		$150.67
0314	Hyperthermic Therapies	S	4.6041	$251.20	$101.77	$50.24
0320	Electroconvulsive Therapy	S	5.3785	$293.46	$80.06	$58.69
0321	Biofeedback and Other Training	S	1.4817	$80.84	$21.78	$16.17
0322	Brief Individual Psychotherapy	S	1.2802	$69.85		$13.97
0323	Extended Individual Psychotherapy	S	1.8689	$101.97	$21.26	$20.39
0324	Family Psychotherapy	S	2.4473	$133.53		$26.71
0325	Group Psychotherapy	S	1.4865	$81.10	$18.27	$16.22
0330	Dental Procedures	S	0.5745	$31.35		$6.27
0332	Computerized Axial Tomography and Computerized Angiography without Contras.	S	3.3936	$185.16	$91.27	$37.03
0333	Computerized Axial Tomography and Computerized Angio w/o Contrast Material.	S	5.4241	$295.94	$146.98	$59.19
0335	Magnetic Resonance Imaging, Miscellaneous	S	6.3499	$346.46	$151.46	$69.29
0336	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Cont.	S	6.3897	$348.63	$174.31	$69.73
0337	MRI and Magnetic Resonance Angiography without Contrast Material followed.	S	9.2075	$502.37	$240.77	$100.47
0339	Observation	S	6.6961	$365.35		$73.07
0340	Minor Ancillary Procedures	X	0.6314	$34.45		$6.89
0341	Skin Tests	X	0.1365	$7.45	$3.03	$1.49
0342	Level I Pathology	X	0.2162	$11.80	$5.88	$2.36
0343	Level II Pathology	X	0.4617	$25.19	$12.55	$5.04
0344	Level III Pathology	X	0.6291	$34.32	$17.16	$6.86
0345	Level I Transfusion Laboratory Procedures	X	0.2550	$13.91	$3.10	$2.78
0346	Level II Transfusion Laboratory Procedures	X	0.3866	$21.09	$5.32	$4.22
0347	Level III Transfusion Laboratory Procedures	X	0.9610	$52.43	$13.20	$10.49

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0348	Fertility Laboratory Procedures	X	0.8194	$44.71		$8.94
0352	Level I Injections	X	0.1230	$6.71		$1.34
0353	Level II Allergy Injections	X	0.3982	$21.73		$4.35
0355	Level III Immunizations	K	0.2749	$15.00		$3.00
0356	Level IV Immunizations	K	0.7698	$42.00		$8.40
0359	Level II Injections	X	0.8000	$43.65		$8.73
0360	Level I Alimentary Tests	X	1.7313	$94.46	$42.45	$18.89
0361	Level II Alimentary Tests	X	3.5510	$193.75	$83.23	$38.75
0362	Level III Otorhinolaryngologic Function Tests	X	2.6984	$147.23		$29.45
0363	Level I Otorhinolaryngologic Function Tests	X	0.8641	$47.15	$17.44	$9.43
0364	Level I Audiometry	X	0.4459	$24.33	$9.06	$4.87
0365	Level II Audiometry	X	1.2132	$66.19	$18.95	$13.24
0367	Level I Pulmonary Test	X	0.5887	$32.12	$15.16	$6.42
0368	Level II Pulmonary Tests	X	0.9319	$50.85	$25.42	$10.17
0369	Level III Pulmonary Tests	X	2.4984	$136.32	$44.18	$27.26
0370	Allergy Tests	X	0.9185	$50.11	$11.58	$10.02
0371	Level I Allergy Injections	X	0.4105	$22.40		$4.48
0372	Therapeutic Phlebotomy	X	0.5607	$30.59	$10.09	$6.12
0373	Neuropsychological Testing	X	2.3288	$127.06		$25.41
0374	Monitoring Psychiatric Drugs	X	1.1252	$61.39		$12.28
0375	Ancillary Outpatient Services When Patient Expires	T		$1,150.00		$230.00
0376	Level II Cardiac Imaging	S	4.4510	$242.85	$121.42	$48.57
0377	Level III Cardiac Imaging	S	6.8830	$375.54	$187.76	$75.11
0378	Level II Pulmonary Imaging	S	5.4852	$299.28	$149.63	$59.86
0379	Injection adenosine 6 Mg	K	0.2078	$11.34		$2.27
0380	Dipyridamole injection	K	0.2525	$13.78		$2.76
0384	GI Procedures with Stents	T	36.5400	$1,993.66	$433.01	$398.73
0385	Level I Prosthetic Urological Procedures	S	67.1530	$3,663.93		$732.79
0386	Level II Prosthetic Urological Procedures	S	116.2382	$6,342.07		$1,268.41
0387	Level II Hysteroscopy	T	28.1480	$1,535.78	$655.55	$307.16
0388	Discography	S	11.6347	$634.80	$303.19	$126.96
0389	Non-imaging Nuclear Medicine	S	1.6328	$89.09	$44.54	$17.82
0390	Level I Endocrine Imaging	S	2.7907	$152.26	$76.13	$30.45
0391	Level II Endocrine Imaging	S	3.1956	$174.36	$87.18	$34.87
0393	Red Cell/Plasma Studies	S	4.4354	$242.00	$121.00	$48.40
0394	Hepatobiliary Imaging	S	4.3714	$238.51	$119.25	$47.70
0395	GI Tract Imaging	S	3.9536	$215.71	$107.85	$43.14
0396	Bone Imaging	S	4.1883	$228.52	$114.26	$45.70
0397	Vascular Imaging	S	2.2183	$121.03	$60.51	$24.21
0398	Level I Cardiac Imaging	S	4.5091	$246.02	$123.01	$49.20
0399	Nuclear Medicine Add-on Imaging	S	1.5273	$83.33	$41.66	$16.67
0400	Hematopoietic Imaging	S	3.8242	$208.65	$104.32	$41.73
0401	Level I Pulmonary Imaging	S	3.3736	$184.07	$92.03	$36.81
0402	Brain Imaging	S	5.4063	$294.97	$147.48	$58.99
0403	CSF Imaging	S	3.8402	$209.53	$104.76	$41.91
0404	Renal and Genitourinary Studies Level I	S	3.7303	$203.53	$101.76	$40.71
0405	Renal and Genitourinary Studies Level II	S	4.3432	$236.97	$118.48	$47.39
0406	Tumor/Infection Imaging	S	4.3955	$239.82	$119.91	$47.96
0407	Radionuclide Therapy	S	3.5841	$195.55	$97.77	$39.11
0409	Red Blood Cell Tests	X	0.1390	$7.58	$2.32	$1.52
0410	Mammogram Add On	S	0.1523	$8.31		$1.66
0411	Respiratory Procedures	S	0.4367	$23.83		$4.77
0412	IMRT Treatment Delivery	S	5.3904	$294.11		$58.82
0415	Level II Endoscopy Lower Airway	T	20.7348	$1,131.31	$459.92	$226.26
0600	Low Level Clinic Visits	V	0.9278	$50.62		$10.12
0601	Mid Level Clinic Visits	V	0.9816	$53.56		$10.71
0602	High Level Clinic Visits	V	1.5041	$82.07		$16.41
0610	Low Level Emergency Visits	V	1.3691	$74.70	$19.57	$14.94
0611	Mid Level Emergency Visits	V	2.3967	$130.77	$36.16	$26.15
0612	High Level Emergency Visits	V	4.1476	$226.30	$54.12	$45.26
0620	Critical Care	S	8.9992	$491.01	$142.30	$98.20
0648	Breast Reconstruction with Prosthesis	T	54.0165	$2,947.19		$589.44
0651	Complex Interstitial Radiation Source Application	S	10.2314	$558.24		$111.65
0652	Insertion of Intraperitoneal Catheters	T	27.0364	$1,475.13		$295.03
0653	Vascular Reconstruction/Fistula Repair with Device	T	30.0334	$1,638.65		$327.73
0654	Insertion/Replacement of a permanent dual chamber pacemaker.	T	112.6957	$6,148.79		$1,229.76
0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.	T	142.7039	$7,786.07		$1,557.21

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0656	Transcatheter Placement of Intracoronary Drug-Eluting Stents.	T	103.4907	$5,646.56		$1,129.31
0657	Placement of Tissue Clips	S	1.5102	$82.40		$16.48
0658	Percutaneous Breast Biopsies	T	5.5779	$304.34		$60.87
0659	Hyperbaric Oxygen	S	3.0228	$164.93		$32.99
660	Level II Otorhinolaryngologic Function Tests	X	1.7353	$94.68	$30.66	$18.94
0661	Level IV Pathology	X	3.2576	$177.74	$88.87	$35.55
0662	CT Angiography	S	5.8775	$320.68	$156.47	$64.14
0664	Proton Beam Radiation Therapy	S	9.7295	$530.85		$106.17
0665	Bone Density: Appendicular Skeleton	S	0.7257	$39.59		$7.92
0668	Level I Angiography and Venography except Extremity	S	10.2660	$560.12	$237.76	$112.02
0669	Digital Mammography	S	0.9009	$49.15		$9.83
0670	Intravenous and Intracardiac Ultrasound	S	27.4483	$1,497.61	$542.37	$299.52
0671	Level II Echocardiogram Except Transesophageal	S	1.6384	$89.39	$44.69	$17.88
0672	Level IV Posterior Segment Procedures	T	38.9476	$2,125.02	$988.43	$425.00
0673	Level IV Anterior Segment Eye Procedures	T	26.8390	$1,464.36	$649.56	$292.87
0674	Prostate Cryoablation	T	119.9733	$6,545.86		$1,309.17
0675	Prostatic Thermotherapy	T	49.3452	$2,692.32		$538.46
0676	Level II Transcatheter Thrombolysis	T	2.7315	$149.03	$40.30	$29.81
0677	Level I Transcatheter Thrombolysis	T	2.1805	$118.97		$23.79
0678	External Counterpulsation	T	2.0659	$112.72		$22.54
0679	Level II Resuscitation and Cardioversion	S	5.4887	$299.47	$95.30	$59.89
0680	Insertion of Patient Activated Event Recorders	S	62.8252	$3,427.81		$685.56
0681	Knee Arthroplasty	T	98.1613	$5,355.78	$2,131.36	$1,071.16
0682	Level V Debridement & Destruction	T	8.0790	$440.80	$174.57	$88.16
0683	Level II Photochemotherapy	S	1.5489	$84.51	$30.42	$16.90
0685	Level III Needle Biopsy/Aspiration Except Bone Marrow	T	4.8100	$262.44	$115.47	$52.49
0686	Level III Skin Repair	T	7.9247	$432.38	$198.89	$86.48
0687	Revision/Removal of Neurostimulator Electrodes	T	20.4416	$1,115.31	$513.05	$223.06
0688	Revision/Removal of Neurostimulator Pulse Generator Receiver.	T	46.7347	$2,549.89	$1,249.45	$509.98
0689	Electronic Analysis of Cardioverter-defibrillators	S	0.5533	$30.19		$6.04
0690	Electronic Analysis of Pacemakers and other Cardiac Devices.	S	0.4074	$22.23	$10.63	$4.45
0691	Electronic Analysis of Programmable Shunts/Pumps	S	2.8066	$153.13	$76.56	$30.63
0692	Electronic Analysis of Neurostimulator Pulse Generators	S	1.1057	$60.33	$30.16	$12.07
0693	Level II Breast Reconstruction	T	39.0111	$2,128.48	$798.17	$425.70
0694	Mohs Surgery	T	2.9752	$162.33	$64.93	$32.47
0695	Level VII Debridement & Destruction	T	19.1849	$1,046.75	$266.59	$209.35
0697	Level I Echocardiogram Except Transesophageal	S	1.4415	$78.65	$39.32	$15.73
0698	Level II Eye Tests & Treatments	S	0.9599	$52.37	$18.72	$10.47
0699	Level IV Eye Tests & Treatments	T	2.2303	$121.69	$47.46	$24.34
0700	Antepartum Manipulation	T	2.4306	$132.62	$37.13	$26.52
0701	SR 89 chloride, per mCi	K		$892.43		$178.49
0702	SM 153 lexidronam, 50 mCi	K		$493.89		$98.78
0704	IN 111 Satumomab pendetide per dose	K		$1,474.00		$294.80
0705	Technetium TC99M tetrofosmin	K	1.0642	$665.28		$133.06
0726	Dexrazoxane hcl injection, 250 mg	K	2.0616	$112.48		$22.50
0728	Filgrastim 300 mcg injection	K		$172.20		$34.44
0730	Pamidronate disodium , 30 mg	K		$128.74		$25.75
0731	Sargramostim injection	K		$26.92		$5.38
0732	Mesna injection 200 mg	K		$17.66		$3.53
0733	Non esrd epoetin alpha inj, 1000 u	K		$11.76		$2.35
0734	Injection, darbepoetin alfa (for non-ESRD), per 1 mcg	K		$3.88		$0.78
0763	Dolasetron mesylate oral	K		$152.38		$30.48
0764	Granisetron HCl injection	K		$17.18		$3.44
0765	Granisetron HCl 1 mg oral	K		$171.78		$34.36
0800	Leuprolide acetate, 3.75 mg	K		$479.20		$95.84
0802	Etoposide oral 50 mg	K		$21.91		$4.38
0807	Aldesleukin/single use vial	K		$680.35		$136.07
0809	Bcg live intravesical vac	K		$77.54		$15.51
0810	Goserelin acetate implant 3.6 mg	K		$413.59		$82.72
0811	Carboplatin injection 50 mg	K		$137.79		$27.56
0813	Cisplatin 10 mg injection	K		$7.73		$1.55
0814	Asparaginase injection	K		$58.00		$11.60
0815	Cyclophosphamide 100 MG inj	K		$2.77		$0.55
0816	Cyclophosphamide lyophilized	K		$2.36		$0.47
0817	Cytarabine hcl 100 MG inj	K		$1.55		$0.31
0819	Dacarbazine 100 mg inj	K	0.0974	$5.31		$1.06

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0820	Daunorubicin 10 mg	K		$35.94		$7.19
0821	Daunorubicin citrate liposom 10 mg	K		$64.60		$12.92
0823	Docetaxel, 20 mg	K		$331.53		$66.31
0824	Etoposide 10 MG inj	K		$0.83		$0.17
0827	Floxuridine injection 500 mg	K		$66.24		$13.25
0828	Gemcitabine HCL 200 mg	K		$112.09		$22.42
0830	Irinotecan injection 20 mg	K		$135.00		$27.00
0831	Ifosfomide injection 1 gm	K		$72.81		$14.56
0832	Idarubicin hcl injection 5 mg	K	3.2663	$178.21		$35.64
0834	Interferon alfa-2a inj	K		$32.31		$6.46
0836	Interferon alfa-2b inj recombinant, 1 million	K		$13.78		$2.76
0838	Interferon gamma 1-b inj, 3 million u	K		$290.70		$58.14
0840	Melphalan hydrochl 50 mg	K		$389.14		$77.83
0842	Fludarabine phosphate inj 50 mg	K		$329.83		$65.97
0844	Pentostatin injection, 10 mg	K		$1,784.64		$356.93
0847	Doxorubic hcl 10 MG vl chemo	K		$4.69		$0.94
0849	Rituximab, 100 mg	K		$464.20		$92.84
0850	Streptozocin injection, 1 gm	K		$131.05		$26.21
0851	Thiotepa injection	K		$45.31		$9.06
0852	Topotecan, 4 mg	K		$739.80		$147.96
0855	Vinorelbine tartrate, 10 mg	K		$100.97		$20.19
0856	Porfimer sodium, 75 mg	K		$2,411.82		$482.36
0857	Bleomycin sulfate injection 15 u	K		$88.32		$17.66
0858	Cladribine, 1mg	K		$24.84		$4.97
0860	Plicamycin (mithramycin) inj	K		$86.89		$17.38
0861	Leuprolide acetate injection 1 mg	K		$14.48		$2.90
0862	Mitomycin 5 mg inj	K		$30.91		$6.18
0863	Paclitaxel injection, 30 mg	K		$79.04		$15.81
0864	Mitoxantrone hcl, 5 mg	K		$332.87		$66.57
0865	Interferon alfa-n3 inj, human leukocyte derived, 2	K		$8.17		$1.63
0884	Rho d immune globulin inj, 1 dose pkg	K		$92.93		$18.59
0888	Cyclosporine oral 100 mg	K		$2.41		$0.48
0890	Lymphocyte immune globulin 250 mg	K		$258.17		$51.63
0891	Tacrolimus oral per 1 mg	K		$3.24		$0.65
0900	Alglucerase injection, per 10 u	K		$37.13		$7.43
0901	Alpha 1 proteinase inhibitor, 10 mg	K		$3.43		$0.69
0902	Botulinum toxin a, per unit	K		$4.58		$0.92
0903	Cytomegalovirus imm IV/vial	K		$659.60		$131.92
0905	Immune globulin, 1g	K		$37.95		$7.59
0906	RSV-ivig, 50 mg	K		$16.55		$3.31
0907	Ganciclovir sodium injection	K	0.5918	$32.29		$6.46
0909	Interferon beta-1a, 33 mcg	K		$123.77		$24.75
0910	Interferon beta-1b /0.25 mg	K		$67.22		$13.44
0911	Streptokinase per 250,000 iu	K	1.5733	$85.84		$17.17
0913	Ganciclovir long act implant	K	1.5861	$86.54		$17.31
0916	Imiglucerase injection/unit	K		$3.71		$0.74
0917	Adenosine injection	K	1.0393	$56.71		$11.34
0925	Factor viii per iu	K		$0.42		$0.08
0926	Factor VIII (porcine) per iu	K		$1.89		$0.38
0927	Factor viii recombinant per iu	K		$0.61		$0.12
0928	Factor ix complex per iu	K		$0.18		$0.04
0929	Anti-inhibitor per iu	K		$0.69		$0.14
0931	Factor IX non-recombinant, per iu	K		$0.51		$0.10
0932	Factor IX recombinant, per iu	K		$1.04		$0.21
0949	Plasma, Pooled Multiple Donor, Solvent/Detergent	K		$124.31		$24.86
0950	Blood (Whole) For Transfusion	K		$87.93		$17.59
0952	Cryoprecipitate	K		$29.31		$5.86
0954	RBC leukocytes reduced	K		$119.26		$23.85
0955	Plasma, Fresh Frozen	K		$95.00		$19.00
0956	Plasma Protein Fraction	K		$92.98		$18.60
0957	Platelet Concentrate	K		$41.44		$8.29
0958	Platelet Rich Plasma	K		$53.56		$10.71
0959	Red Blood Cells	K		$86.41		$17.28
0960	Washed Red Blood Cells	K		$160.69		$32.14
0961	Infusion, Albumin (Human) 5%, 50 ml	K	0.2802	$15.29		$3.06
0963	Albumin (human), 5%, 250 ml	K	1.0901	$59.48		$11.90
0964	Albumin (human), 25%, 20 ml	K	0.3741	$20.41		$4.08
0965	Albumin (human), 25%, 50ml	K	0.8869	$48.39		$9.68
0966	Plasmaprotein fract,5%,250ml	K		$464.90		$92.98

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
1009	Cryoprecip reduced plasma	K		$37.39		$7.48
1010	Blood, L/R, CMV-neg	K		$121.78		$24.36
1011	Platelets, HLA-m, L/R, unit	K		$499.77		$99.95
1013	Platelet concentrate, L/R, unit	K		$49.52		$9.90
1016	Blood, L/R, froz/deglycerol/washed	K		$301.68		$60.34
1017	Platelets, aph/pher, L/R, CMV-neg, unit	K		$393.15		$78.63
1018	Blood, L/R, irradiated	K		$132.40		$26.48
1019	Platelets, aph/pher, L/R, irradiated, unit	K		$406.28		$81.26
1020	Pit, pher,L/R,CMV,irrad	K		$495.22		$99.04
1021	RBC, frz/deg/wsh, L/R, irrad	K		$336.04		$67.21
1022	RBC, L/R, CMV neg, irrad	K		$201.12		$40.22
1045	Iobenguane sulfate I-131per 0.5 mCi	K	3.0392	$165.82		$33.16
1064	I-131 sodium iodide capsule	K	0.1004	$5.48		$1.10
1065	I-131 sodium iodide solution	K	0.1189	$6.49		$1.30
1079	CO 57/58 per 0.5 uCi	K		$235.14		$47.03
1080	I-131 tositumomab, dx	K		$2,565.55		$513.11
1081	I-131 tositumomab, tx	K		$22,210.19		$4,442.04
1084	Denileukin diftitox, 300 MCG	K		$1,232.88		$246.58
1086	Temozolomide,oral 5 mg	K		$6.81		$1.36
1089	Cyanocobalamin cobalt co57	K		$47.38		$9.48
1091	IN 111 Oxyquinoline, per .5 mCi	K	4.1151	$224.52		$44.90
1092	IN 111 Pentetate, per 0.5 mCi	K		$237.60		$47.52
1095	Technetium TC 99M Depreotide	K		$704.00		$140.80
1096	TC 99M Exametazime, per dose	K		$825.00		$165.00
1122	TC 99M arcitumomab, per vial	K		$1,144.00		$228.80
1166	Cytarabine liposome	K		$344.08		$68.82
1167	Epirubicin hcl, 2 mg	K		$25.60		$5.12
1178	Busulfan IV, 6 mg	K		$27.87		$5.57
1200	TC 99M Sodium Glucoheptonat	K		$30.28		$6.06
1201	TC 99M SUCCIMER, PER Vial	K		$125.66		$25.13
1203	Verteporfin for injection	K		$1,350.80		$270.16
1207	Octreotide injection, depd	K		$73.62		$14.72
1305	Apligraf	K		$1,199.00		$239.80
1409	Factor viia recombinant, per 1.2 mg	K		$1,495.30		$299.06
1501	New Technology - Level I ($0–$50)	S		$25.00		$5.00
1502	New Technology - Level II ($50–$100)	S		$75.00		$15.00
1503	New Technology - Level III ($100–$200)	S		$150.00		$30.00
1504	New Technology - Level IV ($200–$300)	S		$250.00		$50.00
1505	New Technology - Level V ($300–$400)	S		$350.00		$70.00
1506	New Technology - Level VI ($400–$500)	S		$450.00		$90.00
1507	New Technology - Level VII ($500–$600)	S		$550.00		$110.00
1508	New Technology - Level VIII ($600–$700)	S		$650.00		$130.00
1509	New Technology - Level IX ($700–$800)	S		$750.00		$150.00
1510	New Technology - Level X ($800–$900)	S		$850.00		$170.00
1511	New Technology - Level XI ($900–$1000)	S		$950.00		$190.00
1512	New Technology - Level XII ($1000–$1100)	S		$1,050.00		$210.00
1513	New Technology - Level XIII ($1100–$1200)	S		$1,150.00		$230.00
1514	New Technology - Level XIV ($1200–$1300)	S		$1,250.00		$250.00
1515	New Technology - Level XV ($1300–$1400)	S		$1,350.00		$270.00
1516	New Technology - Level XVI ($1400–$1500)	S		$1,450.00		$290.00
1517	New Technology - Level XVII ($1500–$1600)	S		$1,550.00		$310.00
1518	New Technology - Level XVIII ($1600–$1700)	S		$1,650.00		$330.00
1519	New Technology - Level IXX ($1700–$1800)	S		$1,750.00		$350.00
1520	New Technology - Level XX ($1800–$1900)	S		$1,850.00		$370.00
1521	New Technology - Level XXI ($1900–$2000)	S		$1,950.00		$390.00
1522	New Technology - Level XXII ($2000–$2500)	S		$2,250.00		$450.00
1523	New Technology - Level XXIII ($2500–$3000)	S		$2,750.00		$550.00
1524	New Technology - Level XIV ($3000–$3500)	S		$3,250.00		$650.00
1525	New Technology - Level XXV ($3500–$4000)	S		$3,750.00		$750.00
1526	New Technology - Level XXVI ($4000–$4500)	S		$4,250.00		$850.00
1527	New Technology - Level XXVII ($4500–$5000)	S		$4,750.00		$950.00
1528	New Technology - Level XXVIII ($5000–$5500)	S		$5,250.00		$1,050.00
1529	New Technology - Level XXIX ($5500–$6000)	S		$5,750.00		$1,150.00
1530	New Technology - Level XXX ($6000–$6500)	S		$6,250.00		$1,250.00
1531	New Technology - Level XXXI ($6500–$7000)	S		$6,750.00		$1,350.00
1532	New Technology - Level XXXII ($7000–$7500)	S		$7,250.00		$1,450.00
1533	New Technology - Level XXXIII ($7500–$8000)	S		$7,750.00		$1,550.00
1534	New Technology - Level XXXIV ($8000–$8500)	S		$8,250.00		$1,650.00
1535	New Technology - Level XXXV ($8500–$9000)	S		$8,750.00		$1,750.00

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
1536	New Technology - Level XXXVI ($9000–$9500)	S		$9,250.00		$1,850.00
1537	New Technology - Level XXXVII ($9500–$10000)	S		$9,750.00		$1,950.00
1538	New Technology - Level I ($0–$50)	T		$25.00		$5.00
1539	New Technology - Level II ($50–$100)	T		$75.00		$15.00
1540	New Technology - Level III ($100–$200)	T		$150.00		$30.00
1541	New Technology - Level IV ($200–$300)	T		$250.00		$50.00
1542	New Technology - Level V ($300–$400)	T		$350.00		$70.00
1543	New Technology - Level VI ($400–$500)	T		$450.00		$90.00
1544	New Technology - Level VII ($500–$600)	T		$550.00		$110.00
1545	New Technology - Level VIII ($600–$700)	T		$650.00		$130.00
1546	New Technology - Level IX ($700–$800)	T		$750.00		$150.00
1547	New Technology - Level X ($800–$900)	T		$850.00		$170.00
1548	New Technology - Level XI ($900–$1000)	T		$950.00		$190.00
1549	New Technology - Level XII ($1000–$1100)	T		$1,050.00		$210.00
1550	New Technology - Level XIII ($1100–$1200)	T		$1,150.00		$230.00
1551	New Technology - Level XIV ($1200–$1300)	T		$1,250.00		$250.00
1552	New Technology - Level XV ($1300–$1400)	T		$1,350.00		$270.00
1553	New Technology - Level XVI ($1400–$1500)	T		$1,450.00		$290.00
1554	New Technology - Level XVII ($1500–$1600)	T		$1,550.00		$310.00
1555	New Technology - Level XVIII ($1600–$1700)	T		$1,650.00		$330.00
1556	New Technology - Level XIX ($1700–$1800)	T		$1,750.00		$350.00
1557	New Technology - Level XX ($1800–$1900)	T		$1,850.00		$370.00
1558	New Technology - Level XXI ($1900–$2000)	T		$1,950.00		$390.00
1559	New Technology - Level XXII ($2000–$2500)	T		$2,250.00		$450.00
1560	New Technology - Level XXIII ($2500–$3000)	T		$2,750.00		$550.00
1561	New Technology - Level XXIV ($3000–$3500)	T		$3,250.00		$650.00
1562	New Technology - Level XXV ($3500–$4000)	T		$3,750.00		$750.00
1563	New Technology - Level XXVI ($4000–$4500)	T		$4,250.00		$850.00
1564	New Technology - Level XXVII ($4500–$5000)	T		$4,750.00		$950.00
1565	New Technology - Level XXVIII ($5000–$5500)	T		$5,250.00		$1,050.00
1566	New Technology - Level XXIX ($5500–$6000)	T		$5,750.00		$1,150.00
1567	New Technology - Level XXX ($6000–$6500)	T		$6,250.00		$1,250.00
1568	New Technology - Level XXXI ($6500–$7000)	T		$6,750.00		$1,350.00
1569	New Technology - Level XXXII ($7000–$7500)	T		$7,250.00		$1,450.00
1570	New Technology - Level XXXIII ($7500–$8000)	T		$7,750.00		$1,550.00
1571	New Technology - Level XXXIV ($8000–$8500)	T		$8,250.00		$1,650.00
1572	New Technology - Level XXXV ($8500–$9000)	T		$8,750.00		$1,750.00
1573	New Technology - Level XXXVI ($9000–$9500)	T		$9,250.00		$1,850.00
1574	New Technology - Level XXXVII ($9500–$10000)	T		$9,750.00		$1,950.00
1600	Technetium TC 99m sestamibi	K		$112.73		$22.55
1603	Thallous chloride TL 201/mci	K		$18.29		$3.66
1604	IN 111 capromab pendetide, per dose	K		$2,030.60		$406.12
1605	Abciximab injection, 10 mg	K		$475.22		$95.04
1606	Anistreplase, 30 u	K		$2,495.31		$499.06
1607	Eptifibatide injection, 5mg	K		$11.88		$2.38
1608	Etanercept injection	K		$143.73		$28.75
1609	Rho(D) immune globulin h, sd, 100 iu	K		$19.03		$3.81
1611	Hylan G-F 20 injection, 16 mg	K		$215.97		$43.19
1612	Daclizumab, parenteral, 25 mg	K		$393.78		$78.76
1613	Trastuzumab, 10 mg	K		$53.85		$10.77
1614	Valrubicin, 200 mg	K		$487.87		$97.57
1615	Basiliximab, 20 mg	K		$1,425.06		$285.01
1618	Vonwillebrandfactrcmplx, per iu	K		$0.46		$0.09
1619	Gallium ga 67	K	0.2056	$11.22		$2.24
1620	Technetium tc99m bicisate	K		$392.93		$78.59
1622	Technetium tc99m mertiatide	K		$1,650.00		$330.00
1624	Sodium phosphate p32	K		$66.44		$13.29
1625	Indium 111-in pentetreotide	K		$1,144.00		$228.80
1628	Chromic phosphate p32	K		$81.27		$16.25
1716	Brachytx source, Gold 198	H				
1717	Brachytx source, HDR Ir-192	H				
1718	Brachytx source, Iodine 125	H				
1719	Brachytx source,Non-HDR Ir-192	H				
1720	Brachytx source, Palladium 103	H				
1775	FDG, per dose (4-40 mCi/ml)	K	5.9471	$324.48		$64.90
1783	Ocular implant, aqueous drain device	H				$-
1814	Retinal Tamp, silicone oil	H				$-
1818	Integrated keratoprosthesis	H				$-
1819	Tissue localization-excision dev	H				$-

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
1884	Embolization Protect syst	H				$-
1888	Catheter, ablation, non-cardiac, endovascular (implantable).	H				$-
1900	Lead coronary venous	H				$-
2614	Probe, percutaneous lumbar disc	H				$-
2616	Brachytx source, Yttrium-90	H				
2632	Brachytx sol, I-125, per mCi	H				$-
2633	Brachytx source, Cesium-131	H				
7000	Amifostine, 500 mg	K		$419.59		$83.92
7007	Inj milrinone lactate, per 5 mg	K	0.2129	$11.62		$2.32
7011	Oprelvekin injection, 5 mg	K		$248.16		$49.63
7015	Busulfan, oral, 2 mg	K		$1.93		$0.39
7019	Aprotinin, 10,000 kiu	K		$13.26		$2.65
7024	Corticorelin ovine triflutat	K		$375.00		$75.00
7025	Digoxin immune FAB (ovine)	K		$1.79		$0.36
7026	Ethanolamine oleate 100 mg	K		$67.10		$13.42
7027	Fomepizole, 15mg	K		$10.65		$2.13
7028	Fosphenytoin, 50 mg	K		$5.63		$1.13
7030	Hemin, per 1 mg	K		$6.86		$1.37
7031	Octreotide acetate injection	K		$3.94		$0.79
7034	Somatropin injection	K		$297.79		$59.56
7035	Teniposide, 50 mg	K		$238.49		$47.70
7036	Urokinase 250,000 iu inj	K	3.7855	$206.54		$41.31
7037	Urofollitropin, 75 iu	K	1.1634	$63.48		$12.70
7038	Muromonab-CD3, 5 mg	K		$792.33		$158.47
7040	Pentastarch 10% solution	K		$139.94		$27.99
7041	Tirofiban hydrochloride 12.5 mg	K		$436.66		$87.33
7042	Capecitabine, oral, 150 mg	K		$3.14		$0.63
7043	Infliximab injection 10 mg	K		$31.81		$6.36
7045	Trimetrexate glucoronate	K		$132.00		$26.40
7046	Doxorubicin hcl liposome inj 10 mg	K		$364.49		$72.90
7048	Alteplase recombinant	K	0.2856	$15.58		$3.12
7049	Filgrastim 480 mcg injection	K		$290.93		$58.19
7051	Leuprolide acetate implant, 65 mg	K		$5,001.92		$1,000.38
7316	Sodium hyaluronate injection	K		$67.16		$13.43
9001	Linezolid injection	K		$34.09		$6.82
9002	Tenecteplase, 50mg/vial	K		$2,492.60		$498.52
9003	Palivizumab, per 50mg	K		$611.24		$122.25
9004	Gemtuzumab ozogamicin inj,5mg	K		$2,022.90		$404.58
9005	Reteplase injection	K		$1,263.90		$252.78
9006	Tacrolimus injection	K		$110.04		$22.01
9008	Baclofen Refill Kit-500mcg	K		$73.92		$14.78
9009	Baclofen refill kit - per 2000 mcg	K	0.7499	$40.92		$8.18
9010	Baclofen refill kit - per 4000 mcg	K		$79.82		$15.96
9012	Arsenic Trioxide	K		$34.32		$6.86
9013	Co 57 cobaltous chloride	K		$56.67		$11.33
9015	Mycophenolate mofetil oral 250 mg	K		$1.36		$0.27
9018	Botulinum toxin B, per 100 u	K		$8.14		$1.63
9019	Caspofungin acetate, 5 mg	K		$30.52		$6.10
9020	Sirolimus tablet, 1 mg	K		$6.60		$1.32
9021	Immune globulin 10 mg	K		$0.41		$0.08
9022	IM inj interferon beta 1-a	K		$13.36		$2.67
9023	Rho d immune globulin 50 mcg	K		$32.21		$6.44
9024	Amphotericin B, lipid formulation	K		$20.86		$4.17
9025	Radiopharms Used to Image Perfusion of Heart	K		$162.63		$32.53
9100	Iodinated I-131albumin, per 5 uci	K		$48.58		$9.72
9104	Anti-thymocycte globulin rabbit	K		$331.23		$66.25
9105	Hep B imm glob, per 1 ml	K		$65.58		$13.12
9108	Thyrotropin alfa, per 1.1 mg	K		$572.00		$114.40
9109	Tirofliban hcl, per 6.25 mg	K		$218.33		$43.67
9110	Alemtuzumab, per 10 mg	K		$541.46		$108.29
9111	Inj, bivalirudin, per 250 mg vial	G		$1.61		$0.32
9112	Perflutren lipid micro, per 2ml	G		$137.28		$27.46
9113	Inj, pantoprazole sodium, vial	G		$23.23		$4.65
9114	Nesiritide, per 0.5 mg vial	G		$140.45		$28.09
9115	Inj, zoledronic acid, per 1 mg	G		$211.07		$42.21
9116	Inj, Ertapenem sodium, per 500 mg	G		$21.99		$4.40
9117	Yttrium 90 ibritumomab tiuxetan	K		$22,210.19		$4,442.04
9118	In-111 ibritumomab tiuxetan	K		$2,565.55		$513.11

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2004—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
9119	Pegfilgrastim, per 1 mg	G		$2,596.00		$519.20
9120	Inj, Fulvestrant, per 50 mg	G		$78.36		$13.09
9121	Inj, Argatroban, per 5 mg	G		$14.63		$2.44
9122	Inj, Triptorelin pamoate, per 3.75 mg	G		$356.66		$59.58
9123	Transcyte, per 247 sq cm	G		$689.78		$115.23
9200	Orcel, per 36 cm2	G		$1,051.60		$210.32
9201	Dermagraft, per 37.5 sq cm	G		$535.04		$107.01
9202	Octafluoropropane	K		$137.28		$27.46
9203	Perflexane lipid micro	G		$127.50		$21.30
9204	Ziprasidone mesylate	G		$18.60		$3.11
9205	Oxaliplatin	G		$8.45		$14.12
9207	Injection, bortezomib	G		$1,039.68		$155.40
9208	Injection, agalsidase beta	G		$123.78		$18.50
9209	Injection, laronidase	G		$644.10		$96.28
9210	Injection, palonosetron HCL	G		$307.80		$46.01
9211	Inj, alefacept, IV	G		$595.00		$99.40
9212	Inj, alefacept, IM	G		$422.88		$70.65
9217	Leuprolide acetate suspnsion, 7.5 mg	K		$576.47		$115.29
9500	Platelets, irradiated	K		$74.79		$14.96
9501	Platelets, pheresis	K		$408.81		$81.76
9502	Platelet pheresis irradiated	K		$443.68		$88.74
9503	Fresh frozen plasma, ea unit	K		$69.74		$13.95
9504	RBC deglycerolized	K		$183.44		$36.69
9505	RBC irradiated	K		$108.65		$21.73
9506	Granulocytes, pheresis	K		$1,248.66		$249.73

ADDENDUM D1.—PAYMENT STATUS INDICATORS FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

Indicator	Item/Code/Service	Explanation
A	Services furnished to a Hospital Outpatient that are paid under a Fee Schedule/Payment System other than OPPS, e.g.: • Ambulance Services • Clinical Diagnostic Laboratory Services • Non-Implantable Prosthetic and Orthotic Devices • EPO for ESRD Patients • Physical, Occupational and Speech Therapy • Routine Dialysis Services for ESRD Patients Provided in a Certified Dialysis Unit of a Hospital. • Screening Mammography	Not paid under OPPS. Paid by Intermediaries under a Fee Schedule/Payment System other than OPPS.
B	Codes that are not recognized by OPPS when submitted on an Outpatient Hospital Part B bill type (12x, 13x, and 14x).	Not paid under OPPS. • May be paid by Intermediaries when submitted on a different bill type, e.g., 75x (CORF), but not paid under OPPS. • An alternate code that is recognized by OPPS when submitted on an Outpatient Hospital Part B bill type (12x, 13x, and 14x) may be available.
C	Inpatient Procedures	Not paid under OPPS. Admit patient; Bill as Inpatient.
D	Deleted Codes	Not paid under OPPS. Not paid under Medicare.
E	Items, Codes, and Services: • That are not covered by Medicare based on Statutory Exclusion. • That are not covered by Medicare for reasons other than Statutory Exclusion. • That are not recognized by Medicare but for which an alternate code for the same item or service may be available. • For which separate payment is not provided by Medicare Not paid under OPPS.	
F	Corneal Tissue Acquisition; Certain CRNA Services	Not paid under OPPS. Paid at reasonable cost.
G	Drug/Biological Pass-Through	Paid under OPPS; Separate APC payment includes Pass-Through amount.
H	Device Category Pass-Through and Brachytherapy Source	Paid under OPPS; Separate cost-based
K	Non Pass-Through Drugs and Biologicals; Radiopharmaceutical Agents.	Paid under OPPS; Separate APC payment.
L	Influenza Vaccine; Pneumococcal Pneumonia Vaccine	Not paid under OPPS. Paid at reasonable cost; Not subject to deductible or coinsurance.
N	Items and Services packaged into APC Rates	Paid under OPPS. However, payment is packaged into payment for other services, including Outliers. Therefore, there is no separate APC payment.

ADDENDUM D1.—PAYMENT STATUS INDICATORS FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

Indicator	Item/Code/Service	Explanation
P	Partial Hospitalization	Paid under OPPS; Per diem APC payment.
S	Significant Procedure, Not Discounted when Multiple	Paid under OPPS; Separate APC payment.
T	Significant Procedure, Multiple Procedure Reduction Applies	Paid under OPPS; Separate APC payment.
V	Clinic or Emergency Department Visit	Paid under OPPS; Separate APC payment.
Y	Non-Implantable Durable Medical Equipment	Not paid under OPPS. All institutional providers other than Home Health Agencies bill to DMERC.
X	Ancillary Service	Paid under OPPS; Separate APC payment.

[FR Doc. 03–32322 Filed 12–31–03; 12:00 pm]

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Federal Register

Tuesday,
January 6, 2004

Part V

The President

Notice of January 5, 2004—Continuation of the National Emergency With Respect to Libya

Federal Register
Vol. 69, No. 3
Tuesday, January 6, 2004

Presidential Documents

Title 3—

The President

Notice of January 5, 2004

Continuation of the National Emergency With Respect to Libya

On January 7, 1986, by Executive Order 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986.

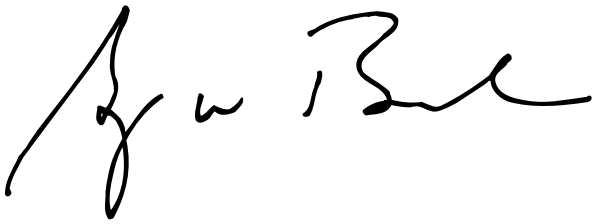
The crisis between the United States and Libya that led to the declaration of a national emergency on January 7, 1986, has not been fully resolved, although there have been some positive developments.

On September 12, 2003, the United Nations Security Council adopted Resolution 1506 (UNSCR 1506), ending the United Nations sanctions against Libya. These U.N. sanctions were imposed in 1992 and 1993 as a result of Libyan involvement in the terrorist bombings of Pan Am 103 in 1988 and UTA 772 in 1989, and included travel restrictions, an arms embargo, and financial sanctions. The UNSCR 1506 lifted these sanctions after Libya addressed the requirements of the relevant UNSC Resolutions, including accepting responsibility for the actions of its officials in the Pan Am 103 attack and arranging to compensate the families of the victims. The United States abstained from voting on the lifting of U.N. sanctions, and it made clear that it continued to have serious concerns about other Libyan policies and actions, including Libya's pursuit of weapons of mass destruction, Libya's role with respect to terrorism, and Libya's poor human rights record.

On December 19, 2003, Prime Minister Blair and I announced separately that Libya's leader, Colonel Muammar Qadhafi, had agreed to eliminate all elements of Libya's chemical and nuclear weapons program, declare all nuclear activities to the International Atomic Energy Agency (IAEA), accept international inspections to ensure Libya's complete adherence to the Nuclear Nonproliferation Treaty and sign the IAEA Additional Protocol, accede to the Chemical Weapons Convention, eliminate ballistic missiles beyond 300 kilometer range, and immediately and unconditionally allow inspectors from international organizations to enter Libya. Libya's declaration of December 19, 2003, marks an important and welcome step toward addressing the concerns of the world community. As Libya takes tangible steps to address those concerns, the United States will in turn take reciprocal tangible steps to recognize Libya's progress. Libya's agreement marks the beginning of a process of rejoining the community of nations, but its declaration of December 19, 2003, must be followed by verification of concrete steps.

Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect

to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
January 5, 2004.

[FR Doc. 04–363
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Patent term extension and patent term adjustment provisions related to Board of Patent Appeals and Interferences decisions; revision; comments due by 1-5-04; published 12-4-03 [FR 03-30151]

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