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WASHINGTON, DC

WHEN: December 7, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Rules and Regulations

Federal Register
Vol. 64, No. 233
Monday, December 6, 1999

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC77

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Non-Discretionary Funding Provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule incorporates into the WIC program regulations numerous non-discretionary funding provisions mandated in the William F. Goodling Child Nutrition Reauthorization Act of 1998. This rule revises and expands backspend and spendforward authority, conversion of funds, multipurpose/infrastructure grants and the use of food funds for the purchase of breast pumps. The rule also revises nutrition services and administration expenditure standards and expands the timing for the use of vendor and participant collections. The provisions in this rule provide greater flexibility for State agencies in the operation of WIC program relating to funds management.

EFFECTIVE DATE: This rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1998, the President signed Public Law 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (the Reauthorization Act), which included several non-discretionary funding provisions pertaining to the WIC program. The Reauthorization Act expands the use of funds recovered from vendors and participants, authorizes the use of food funds to purchase or rent breast pumps, reduces the nutrition services and administration (NSA) expenditure standard from 15 to 10 percent, provides a new option for converting food funds to nutrition services and administration funds, and adjusts the formula for grants for infrastructure, special projects, and breastfeeding promotion and support activities. The Reauthorization Act also authorizes back spending NSA funds, eliminates the spend forward authority for food funds, and expands the spend forward authority for NSA funds. We have also taken this opportunity to rewrite the affected provisions in a question and answer format to improve readability.

Good Cause Determination

The provisions in this rule provide greater flexibility for State agencies in the operation of WIC program relating to funds management. All of these provisions are also non-discretionary. Because of the non-discretionary nature of these legislative provisions, the Administrator of the Food and Nutrition Service (FNS) has determined that, in accordance with 5 U.S.C. 553, prior notice and comment is unnecessary and contrary to the public interest.

Effective Date

These provisions of the Reauthorization Act became effective October 1, 1998. Therefore, we are making this rule effective retroactively to October 1, 1998.

Use of Recoveries From Vendors and Participants

General appropriations principles permit collected claims to be used only in the fiscal year in which the initial obligation was made. In 1994 Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, amended section 17(f)(21) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(f)(21)) to permit funds recovered as a result of violations in the food delivery system to be used in the year in which they are collected as well. Section 203(d) of the Reauthorization Act further amended section 17(f)(21) of the CNA to expand this authority further and to allow funds recovered from vendors and participants as a result of a claim to be used in the fiscal year in which the claim arose, the fiscal year in which the funds are collected, or the fiscal year after collection. This is in addition to the general rule permitting use in the year in which the initial obligation was made. This rule amends section 246.14(e) of the WIC regulations to reflect this change and to make clear that State agencies may not credit funds recovered from participants until any administrative hearings held pursuant to section 246.9 have been completed.

Use of Food Funds To Purchase Breast Pumps

Section 203(h) of the Reauthorization Act amended section 17(h)(1)(C) of the CNA (42 U.S.C. 1786(h)(1)(C)) to allow food funds to be used to purchase breast pumps. State agencies may now use either NSA or food funds to purchase breast pumps. State and local agencies are not required to purchase breast pumps as they are not a required program benefit like supplemental foods or nutrition education. However, breast pumps are aids that a State or local agency may choose to offer certain WIC participants to facilitate breastfeeding. The option now available to State agencies to use food funds to purchase breast pumps will allow greater flexibility in funding sources for breast pump purchases.

The option to use food funds to rent breast pumps was not specifically mentioned in the Reauthorization Act. However, State and local agencies frequently find that renting breast pumps is more cost effective than purchasing them. Representative Goodling, Chairman on the House Committee on Education and the Workforce, has indicated that the omission of specific mention of breast pump rental was not intended to preclude the use of food funds for this purpose. Consequently, in drafting this provision we have interpreted the word ''purchase'' in section 203(h) of the Reauthorization Act to include both the acquisition of an absolute ownership interest in breast pumps by State agencies and the securing by State agencies of the contractual right to the exclusive use of breast pumps for a finite period of time (i.e., the rental of breast pumps). In both situations, a State agency ''purchases'' the exclusive right to use a breast pump, either forever or for a limited time period. Therefore,

this rule amends section 246.14(b) of the WIC program regulations to permit both the purchase and the rental of breast pumps with food funds.

State agencies should note that any food funds expended to purchase or rent breast pumps will not count towards a State agency's nutrition education and breastfeeding promotion and support expenditure requirement. Although sections 17(h)(3) (B) and (C) continue to provide that a State agency may request approval to count the expenditure of other funds for the purpose of meeting the nutrition education and breastfeeding promotion and support activities, we do not interpret the phrase ''other funds'' to include food funds used to purchase or rent of breast pumps. This view is supported by the Senate report for the Reauthorization Act that states: ''the Committee intends that food funds used to provide breast pumps shall be in addition to a State's minimum required nutrition services and administration expenditure for breast-feeding support and promotion.'' (Senate Report Number 105–243, p. 35.) NSA grant expenditures for breast pumps continue to count towards these expenditure requirements.

However, we recently discovered that the November 18, 1998 final rule concerning the non-discretionary provisions of Public Law 103–448 and Public Law 103–227 (63 FR 63969) inadvertently removed the regulatory provisions in section 246.14(c)(1) concerning the use of other funds to meet the nutrition education and breastfeeding promotion and support expenditure requirements. This rule amends section 246.14(c)(1) to reinstate these provisions and to make clear that food costs to purchase or rent breast pumps may not be counted toward the expenditure requirements.

Nutrition Services and Administration Expenditure Standard

Section 203(i)(3) of the Reauthorization Act amended section 17(h)(2)(B)(ii) of the CNA (42 U.S.C. 1786(h)(2)(B)(ii)) by lowering from 15 percent to 10 percent the maximum allowable percent a State agency's per participant NSA expenditures may exceed its per participant NSA grant without potentially suffering a reduction in its NSA grant. Prior to the Reauthorization Act, State agencies were held to the 15 percent standard. Section 17(h)(2)(B)(ii) of the CNA continues to permit the Secretary to lower a State agency's NSA grant if the State agency's per participant NSA expenditure exceeds the per participant NSA grant without good cause. This rule amends section 246.16(e)(2)(ii) of the WIC program regulations to reflect this change.

One of the primary reasons for this change was the revision of the conversion authority by the Reauthorization Act. Under the revised conversion authority, a State agency may now convert food funds to NSA funds based on *projected* increases in participation instead of just *actual* participation increases. The NSA expenditure standard was reduced to 10 percent to improve accountability for the new conversion authority and to prevent this expanded conversion authority from being used to substantially shift food money to NSA spending without increased cost containment savings and participation. We discuss this change to the conversion authority in more detail below.

Conversion of Food Funds to Nutrition Services and Administration Funds

Section 203(i)(5) of the Reauthorization Act amended section 17(h)(5)(A) of the CNA (42 U.S.C. 1786(h)(5)(A)) to allow a State agency to convert food funds to NSA funds in any fiscal year in which it submits a plan to reduce average food costs per participant and to increase participation above the FNS-projected level for the State agency. Before converting any funds, the State agency must obtain the Secretary's approval of the plan. The CNA continues to require that a State agency may convert food funds to NSA funds only to the extent necessary to (1) cover allowable expenditures in the fiscal year in which the conversion takes place, and (2) ensure that the State agency maintains the level established for the per participant NSA grant for that fiscal year.

Prior to the Reauthorization Act, State agencies were allowed to convert food funds to NSA funds only after participation increases were actually achieved through acceptable measures. (''Acceptable measures'' is defined in section 17(h)(5)(C) of the CNA and section 246.16(f) of the current WIC regulations.) If actual participation levels exceeded the FNS-projected level, the State agency was permitted to convert a corresponding amount of food funds to cover actual NSA expenditures. The Reauthorization Act provides greater flexibility to State agencies by allowing conversion based on *projected* increases in participation. We will also continue to allow conversions based on actual participation increases. In these cases, State agencies do not need to submit a plan. This rule amends section 246.16(f) of the WIC regulations to reflect this change.

Grants for Infrastructure, Special Projects, and Breastfeeding Promotion and Support Activities

Section 203(n)(2)(A) of the Reauthorization Act amended section 17(h)(10)(A) of the CNA (42 U.S.C. 1786 (h)(10)(A)) to require that the amount of funding for infrastructure, special projects, and breastfeeding promotion and support activities equal the total amount of NSA and food funds for the prior fiscal year that has not been obligated or $10 million, whichever is less. In the past, the amount of funding available for this purpose was equal to the lesser of $10 million or the amount of unobligated NSA funds from the prior fiscal year. This provision helps to ensure the earlier identification of the total amount of funds available for this purpose because the total amount of unobligated funds has traditionally exceeded $10 million.

The current regulations do not contain the formula for these grants and we do not see the need to add the revised formula to the regulations now. However, we did want to inform interested parties of the statutory change in methodology made by the Reauthorization Act.

NSA Back Spend Provisions

Section 203(n)(1)(B) of the Reauthorization Act amended section 17(i)(3)(A) of the CNA (42 U.S.C. 1786(i)(3)(A)) to allow a State agency to back spend NSA funds in an amount not more than one percent of the amount allocated for NSA from the current fiscal year to cover allowable expenses incurred in the prior fiscal year. To allow for greater flexibility, the law permits NSA funds spent back under this provision to be used for either food or NSA costs incurred in the prior year. There was no change in the provision allowing food funds to be spent back to cover allowable food expenses (but not NSA expenses) incurred in the prior year. State agencies may now back spend funds equal to one percent of their respective food grant and/or NSA grant.

This rule amends section 246.16(b)(3) of the WIC regulations to reflect these changes. This rule also amends section 246.16(b)(3) to delete the cap on the combined amount of funds that could be spent forward and back in any fiscal year, consistent with the change made by section 203(n)(1)(B) of the Reauthorization Act.

Spend Forward Provisions

Section 203(n)(1)(B) of the Reauthorization Act also amended section 17(i)(3)(A) of the CNA (42 U.S.C.

1786(i)(3)(A)) to (1) expand the spend forward authority for NSA funds, and (2) eliminate the spend forward authority for food funds. Under this provision, State agencies may spend forward NSA funds up to an amount equal to one percent of their total grant for each fiscal year to cover allowable NSA expenses in the next fiscal year. Additionally, the Reauthorization Act permits State agencies, with prior approval, to spend forward NSA funds up to an amount equal to one-half of one percent of their total grant for the development of management information systems, including electronic benefit transfer systems. Therefore, State agencies may now spend forward NSA funds up to an amount equal to one and one-half percent of their total grant (NSA plus food grants).

State agencies may both back spend and spend forward funds in any given fiscal year. Therefore, both one percent of the total grant may be back spent *and* one and one-half of the total grant may be spent forward. State agencies should note varying limitations on the amount, the type of funds that may be spent back (both NSA and food funds) or spent forward (NSA funds only), and the use of the funds that are spent back or spent forward.

This rule amends sections 246.16(b)(3)(ii) of the WIC regulations to reflect these changes in the spend forward authority.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531 *et seq.*) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA (2 U.S.C. 1532), FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA (2 U.S.C. 1535) generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule provides additional flexibility in funds management and operations for WIC State agencies, which are not small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

This final rule does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20).

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29114), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted (7 U.S.C 6912(e)).

Executive Order 13132

We have reviewed this final rule under the criteria of Executive Order 13132, Federalism. As noted above, all of the provisions in this rule are required by law. Therefore, we have not prepared a federalism summary impact statement for this rule.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil Rights, Food and Nutrition Service, Food assistance programs, Grant programs—health, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S. C. 1786.

2. In § 246.14:

a. revise paragraph (b);

b. add four new sentences to paragraph (c)(1) introductory text after the sixth sentence; and

c. revise paragraph (e).

The revisions and addition read as follows:

§ 246.14 Program costs.

* * * * *

(b) *What costs may I charge to the food grant?*

(1) The State agency may use food funds for costs of:

(i) Acquiring supplemental foods provided to State or local agencies or participants, whichever receives the supplemental food first;

(ii) Warehousing supplemental foods; and

(iii) Purchasing and renting breast pumps.

(2) For costs to be allowable, the State agency must ensure that food costs do not exceed the vendor's customary sales price. For example, in retail purchase systems, food costs may not exceed the shelf price of the supplemental food provided.

(c) * * *

(1) * * * If the State agency's total reported nutrition education and breastfeeding promotion and support expenditures are less than the required amount of expenditures, FNS will issue a claim for the difference. The State agency may request prior written

permission from FNS to spend less than the required portions of its NSA grant for either nutrition education or for breastfeeding promotion and support activities. FNS will grant such permission if the State agency has sufficiently documented that other resources, including in-kind resources, will be used to conduct these activities at a level commensurate with the requirements of this paragraph (c)(1). However, food costs used to purchase or rent breast pumps may not be used for this purpose. * * *

* * * * *

(e) *How and when may I use my funds recovered from vendors and participants?*

(1) The State agency may keep funds collected through the recovery of claims assessed against food vendors or participants. Recovered funds include those withheld from a vendor as a result of reviews of food instruments prior to payment. Recovered funds may be used for either food or NSA costs.

(2) These recovered funds may be used in the fiscal year:

(i) In which the initial obligation was made;

(ii) In which the claim arose;

(iii) In which the funds are collected; or

(iv) after the funds are collected.

(3) The State agency may not credit any recoveries until:

(i) In the case of a vendor claim, the vendor has had the opportunity to correct or justify the error or apparent overcharge in accordance with § 246.12(r)(5)(iii); or

(ii) In the case of a participant, any administrative hearing requested in accordance with § 246.9 has been completed.

(4) The State agency must report vendor and participant recoveries to FNS through the normal reporting process;

(5) The State agency must keep documentation supporting the amount and use of these vendor and participant recoveries.

3. In § 246.16, revise paragraphs (b)(3), (e)(2)(ii) and (f) to read as follows:

§ 246.16 Distribution of funds.

* * * * *

(b) * * *

(3) *When may I transfer funds from one fiscal year to another?*

(i) *Back spend authority.* The State agency may back spend into the prior fiscal year up to an amount equal to one percent of its current year food grant and one percent of its current year NSA grant. Food funds spent back may be used only for food costs incurred during the prior fiscal year. NSA funds spent back may be used for either food or NSA costs incurred during the prior fiscal year. With prior FNS approval, the State agency may also back spend food funds up to an amount equal to three percent of its current year food grant in a fiscal year for food costs incurred in the prior fiscal year. FNS will approve such a request only if FNS determines there has been a significant reduction in infant formula cost containment savings that affected the State agency's ability to maintain its participation level.

(ii) *Spend forward authority.* (A) The State agency may spend forward NSA funds up to an amount equal to one percent of their total grant (NSA plus food grants) in any fiscal year. These NSA funds spent forward may be used only for NSA costs incurred in the next fiscal year. Any food funds that the State agency converts to NSA funds pursuant to paragraph (f) of this section (based on projected or actual participation increases during a fiscal year) may not be spent forward into the next fiscal year. With prior FNS approval, the State agency may spend forward additional NSA funds up to an amount equal to one-half of one percent of its total grant. These funds are to be used in the next fiscal year for the development of a management information system, including an electronic benefit transfer system.

(B) Funds spent forward will not affect the amount of funds allocated to the State agency for any fiscal year. Funds spent forward must be the first funds expended by the State agency for costs incurred in the next fiscal year.

(iii) *Reporting requirements.* In addition to obtaining prior FNS approval for certain spend forward/back spending options, the State agency must report to FNS the amount of all funds it already has or intends to back spend and spend forward. The spending options must be reported at closeout.

* * * * *

(e) * * *

(2) * * *

(ii) *Reduction of NSA grant.* FNS will reduce the State agency's NSA grant for the next fiscal year if the State agency's current fiscal year per participant NSA expenditure is more than 10 percent higher than its per participant NSA grant. To avoid a reduction to its NSA grant level, the State agency may submit a ''good cause'' justification explaining why it exceeded the applicable limit on excess NSA expenditures. This justification must be submitted at the same time as the close-out report for the applicable fiscal year. Good cause may include dramatic and unforeseen increases in food costs, which would prevent a State agency from meeting its projected participation level.

* * * * *

(f) *How do I qualify to convert food funds to NSA funds?* (1) *Requirements.* The State agency qualifies to convert food funds to NSA funds in any fiscal year in two ways:

(i) *Approved plan.* A State agency may submit a plan to FNS to reduce average food costs per participant and to increase participation above the FNS-projected level for the State agency. If approved, the State agency may use funds allocated for food costs to pay NSA costs.

(ii) *Participation increases achieved.* The State agency may also convert food funds to NSA funds in any fiscal year if it achieves, through acceptable measures, increases in participation in excess of the FNS-projected level for the State agency. Acceptable measures include use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotional activities. FNS will disallow the State agency's conversion of food funds to NSA funds in accordance with paragraph (h) of this section if:

(A) The State agency increases its participation level through measures that are not in the nutritional interests of participants; or

(B) It is not otherwise allowable under program regulations.

(2) *Limitation.* The State agency may convert food funds only to the extent that the conversion is necessary—

(i) To cover NSA expenditures in the current fiscal year; and

(ii) To ensure that the State agency maintains the level established for the per participant NSA grant for the current fiscal year.

(3) *Maximum amount.* The maximum amount the State agency may convert equals the State agency's conversion rate times the projected or actual participation increase, as applicable. The conversion rate is the same as the per participant NSA grant and is determined by dividing the State agency's NSA grant by the FNS-projected participation level. The NSA grant used in the calculation equals the initial allocation of current year funds plus the operational adjustment funding allocated to the State agency for that fiscal year.

* * * * *

Dated: November 26, 1999.

Samuel Chambers Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–31492 Filed 12–3–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 99–020–2]

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with the Animal and Plant Health Inspection Service. We are also adding requirements regarding the repackaging of the avocados after their entry into the United States. These amendments are necessary to ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and to ensure that any boxes used to repackage the avocados in the United States bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico. These amendments will serve to reinforce the existing safeguards of the avocado import program.

EFFECTIVE DATE: January 5, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in § 319.56–2ff allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into certain areas of the United States subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (November through February) that shipments may enter the United States, are designed to reduce the risk of pest introduction to a negligible level. Further, the regulations in § 319.56–2ff limit the distribution of the avocados to 19 northeastern States and the District of Colombia, where climatic conditions preclude the establishment in the United States of any of the exotic plant pests that may attack avocados in Michoacan, Mexico.

On June 25, 1999, we published in the **Federal Register** (64 FR 34141–34144, Docket No. 99–020–1) a proposal to amend the regulations to require handlers and distributors of Mexican Hass avocados to enter into compliance agreements with the Animal and Plant Health Inspection Service (APHIS). In that same document, we also proposed to amend the stickering requirement for the avocados and add provisions regarding the repackaging of the avocados after their entry into the United States.

We solicited comments concerning our proposal rule for 60 days ending on August 24, 1999. We received 10 comments by that date. They were from two Mexican government officials, two State agricultural agencies, a domestic avocado growers group, an agricultural trade organization, three avocado distributors, and a Mexican avocado grower. Four of the commenters supported the proposed rule, although two of those commenters suggested some changes. The remaining commenters opposed one or more aspects of the proposed rule. The comments are discussed below.

Comment: Unless properly monitored and enforced, the new requirements will not be effective at reducing the incidence of illegal transshipment of Mexican avocados. The Department should provide additional information in the final rule concerning the steps it intends to take to monitor whether the appropriate compliance agreements are in place and describe the communications outreach efforts it will take to ensure that produce handlers and distributors are made aware of the new regulations.

Response: Our efforts to ensure that affected persons are made aware of the requirements of the regulations and to monitor whether the appropriate compliance agreements are in place will be closely related. To ensure that all the requirements of the regulations are known, including those requirements added by this final rule, we have created an industry newsletter in both English and Spanish and will forward press releases to trade newspapers and provide information to market owners during regular market surveys outside of the approved States. We will visit distributors and markets, send out mailings, establish an avocado program information website, and create a toll-free regulatory incident hotline prior to the beginning of the shipping season. We will contact all of the distributors and handlers we are aware of who handle Mexican avocados to arrange compliance agreements and will have the opportunity to contact and arrange compliance agreements with additional handlers or distributors during market visits. Finally, this rule's requirement that permittees and handlers confirm that subsequent handlers have entered into a compliance agreement with APHIS will serve as an additional mechanism to ensure that the necessary compliance agreements are in place.

Comment: The final rule must clarify whether the persons involved in the in-transit movement of Mexican avocados to Canada are required to enter into compliance agreements. Additionally, the final rule must specifically state the conditions that must be observed in order for Mexican avocados shipped in-transit to Canada to be eligible to be reshipped into the United States. Such guidance is needed to remove any question regarding whether the Mexican avocado program requirements extend to such fruit.

Response: This rule's compliance agreement requirement applies to persons involved in the handling and distribution of Mexican Hass avocados imported into the United States in accordance with § 319.56–2ff; the in-transit movement of avocados to Canada is a separate matter that is addressed in § 352.29 of the plant quarantine safeguard regulations (7 CFR part 352). Mexican avocados shipped in-transit to Canada are not eligible for reshipment into the United States, even if they were produced in accordance with the requirements of the Mexican avocado import program in § 319.56–2ff.

Comment: We endorse the aspect of the proposed rule that would deny an import permit or compliance agreement to any person who has repeatedly disregarded or violated the terms of an import permit or compliance agreement. However, we believe that the Department should expand this proposed provision to any person who has been found by a court—either an administrative court or a Federal court—to have violated the requirements of other regulatory programs administered by the Department. Inasmuch as such persons have demonstrated their disregard for the Department's regulations, they

cannot be relied upon or expected to fulfill the requirements of the Mexican avocado import program.

Response: It is the exception, rather than the rule, for our enforcement actions against a regulatory violator to reach the level of an administrative hearing or a Federal court; most often, a person cited for a violation will settle by agreeing to pay a civil or criminal penalty. Given that, it does not appear that the commenter's recommendation would be as useful a mechanism for ensuring compliance as it might seem. Further, expanding the denial provisions described in the proposal to include violations of any of the Department's regulatory programs would have ramifications for those programs as well as for the Mexican avocado import program.

Comment: We do not believe that it is proper for the Animal and Plant Health Inspection Service (APHIS) to use regulatory procedures (i.e., the proposed compliance agreement requirement) as an educational tool, particularly when penalties and restraints on trade may be imposed on parties who are in lawful compliance with the substance of the regulations pertaining to handling and distribution of Mexican Hass avocados.

Response: APHIS would have no reason to impose any kind of penalty on any person who is ''in lawful compliance with the substance of the regulations.'' Further, we believe that it is completely appropriate to use compliance agreements as an educational tool, as they are furnished free of charge, take a minimal amount of time to execute, and provide an excellent opportunity for the APHIS personnel who will be meeting with those persons entering into compliance agreements to provide information and answer questions.

Comment: It is neither proper nor necessary for APHIS to require handlers and distributors to enter into compliance agreements in order to educate them as to the requirements of the regulations and to ensure that they receive copies of the regulations. There are a limited number of persons engaged in the handling and distribution of Mexican Hass avocados, and there are many venues (e.g., industry publications, direct mail, and trade show presentations) available through which APHIS could provide full notice of the import program's requirements. APHIS should not be using the proposed compliance agreement requirement as a substitute for discharging its own responsibilities for making its regulations known to the public and enforcing those regulations.

Response: We have pursued the venues suggested by the commenter in disseminating information about the regulations; press releases explaining the import program were distributed at the time the regulations were established, stories were printed in the popular press and in industry publications, and APHIS personnel have visited large markets and individual firms in an effort to inform avocado handlers about the requirements of the regulations, especially the distribution limitations. Further, those distribution limitations are printed on every box of Mexican Hass avocados. Even with those measures, some distributors and handlers still claim to be unaware that the distribution and sale of Mexican Hass avocados is limited to the approved 19 States and the District of Colombia. The compliance agreement is one more way to spread the word, an attempt to reach each and every one of the ''limited number of persons engaged in the handling and distribution of Mexican Hass avocados'' in order to ensure that they are aware of the requirements of the regulations. Beyond its value as an educational tool, the compliance agreement will make it that much easier to take action against those persons who choose to violate the regulations.

Comment: Private firms are neither empowered nor authorized to ''ensure'' compliance with Federal laws and regulations. That is the duty and responsibility of the Government. The proposed regulations are not enforceable by private firms against another firm, but the penalties would be imposed on the first party for the possible wrongful acts of a second or third party. This is not appropriate.

Response: We are not asking private firms to enforce the regulations; we are simply calling on those firms to themselves observe the regulations, i.e., to not transfer avocados to another party for movement or distribution unless that party possesses a compliance agreement. If you confirm that the person to whom you are transferring avocados for movement or distribution possesses a compliance agreement, you have met your obligations under § 319.56–2ff(k)(2) or (3). What that person subsequently does with the avocados is beyond your control and certainly not your responsibility. In such a situation, it is simply not the case that ''penalties would be imposed on the first party for the possible wrongful acts of a second or third party.''

Comment: It is not proper for APHIS to impose penalties (i.e., the denial of import permits or compliance agreements to repeat violators) on one party for the wrongful acts of secondary and subsequent parties. Each permittee, distributor, or handler should be accountable for its actions directly to the Government. Such regulatory and compliance relations between a regulated firm and APHIS are properly the business of those parties only, and not other parties. It is simply not practicable for a permittee, distributor, or handler to ''ensure that any person to whom he or she released the avocados for movement or distribution . . . has entered into a compliance agreement.''

Response: As discussed in the response to the previous comment, a permittee or subsequent handler who observes the requirements of the regulations is in no danger of having a request for an import permit or compliance agreement denied. We disagree with the commenter's assertion that ensuring that a person has a compliance agreement is ''simply not practicable.'' Meeting that requirement can be accomplished quickly and would add only a relatively small amount of time to a typical transaction between buyer and seller.

Comment: The proposed changes to the Mexican Hass avocado import program are unnecessary. The current regulations contain sufficient safeguards, as is evidenced by the fact that APHIS was able to detect the presence of Mexican Hass avocados that were shipped outside the approved States.

Response: The fact that we were able to detect the presence of Mexican Hass avocados in markets outside the approved States highlights the value of market surveys and the requirement that individual avocados be marked with a sticker, but does not mean that there is no need to amend the existing regulations. For example, some of the Mexican Hass avocados found in markets outside the approved States appear to have been shipped by distributors who were simply unaware of the movement restrictions of the regulations. The compliance agreement requirement will ensure that all distributors are aware of those restrictions, which means that this measure alone will reduce the number of violations. We believe that the other measures included in this rule will prove similarly useful in reinforcing the existing safeguards of the regulations.

Comment: As written, the registration of handlers will negatively impact the marketing of Mexican avocados by creating a barrier that will eliminate many sales from wholesale marketers in the northeastern United States to customers who buy avocados in less

than truckload lots. For example, the operator of a small neighborhood store in New York City may wish to purchase four cartons of avocados on a particular day at the Hunts Point Terminal Market, but will be unable to do so because he is not registered with APHIS. It is not practical to expect purchasers such as the store operator or the owner of an independent restaurant to have to register with APHIS and deliver a copy of the compliance agreement to all potential suppliers in order to have the right to buy Mexican avocados.

Response: The store operator and the restauranteur described by the commenter would not be required to enter into a compliance agreement in order to buy avocados for their store or restaurant, as they will be offering the avocados for sale to consumers. The focus of this rule is on making the requirements of the regulations clear to the operators of businesses that normally buy and sell, move, or distribute commercial lots of avocados, such as grocery chains, wholesalers, and distributors. For example, a grocery chain or a chain's regional distribution centers would have to enter into a compliance agreement with APHIS, while the chain's individual retail store managers would not. To make this clear, we have added a new sentence to § 319.56–2ff(k)(1) in this final rule that states that a compliance agreement will not be required for an individual place of business that only offers the avocados for sale directly to consumers.

Comment: The proposed requirement for the marking of the boxes in which fruit is repackaged in the United States would create additional liabilities for the growers, packers, and exporters of avocados, even though these parties have no control over the fruit during the repacking stage. Additional problems such as microbial contamination from improper handling or commingling with other product may arise even though the listed parties bear no true responsibility for the problem.

Response: The commenter did not elaborate as to what types of ''microbial contamination'' might occur during repackaging, nor did he elaborate as to what sorts of liability might attach to a Mexican grower, packer, or exporter in the event of such contamination. If a repackaged box of fruit was found to be somehow contaminated, it would be obvious from the new box that the fruit had been handled by someone other than the original packer/exporter. Clearly, the assignment of liability in such a situation—if indeed there was a need to assign liability—would be a tenuous proposition. Importers and distributors have little choice when it comes to damaged boxes of fruit. They can repack the fruit in new boxes, or they can leave the fruit in the damaged box; the latter option is not likely to be chosen given the risk of further damage to the fruit, plus the fact that most of their customers would not care to receive damaged produce. Since it is quite likely that an importer or distributor is going to repackage the fruit anyway, this rule's provisions regarding the marking of repackaged fruit are a matter of ensuring that the identifying measures required for the original boxes are maintained, thus preserving the important information regarding the origin and identity of the avocados that those measures provide.

Comment: The proposed compliance agreement requirement is an additional burden that may discourage avocado distributors in the United States from conducting business with Mexican growers altogether, leading them to opt instead for fruit from California or from other countries. If that is the case, the compliance agreement requirement will be acting as a nontariff trade barrier.

Response: The time required on the part of a handler or distributor to enter into a compliance agreement will be minimal. That person will need to write down the name, mailing address, and location of the person or firm entering into the agreement; review the movement and other restrictions that apply; and sign and date the document. We expect that an APHIS inspector would spend about 30 minutes with each handler or distributor explaining the requirements of the regulations and filling out the compliance agreement; the mail or a fax machine may be used when an inspector is unable to make a personal visit. There is no charge or user fee associated with the compliance agreement. In addition, Mexican Hass avocados are typically available to wholesalers at attractive prices that make the minimal effort of entering into a compliance worthwhile. (In one of the comments we received, a wholesaler reported that at the end of the 1998/1999 shipping season, his fill-in supplier quoted a price of $50 to $52 for California Hass avocados and $20 for Mexican Hass avocados.) Thus, we do not believe that the minimal burden of entering into a compliance agreement will be likely to discourage persons in the United States from handling or distributing Mexican Hass avocados.

Comment: The proposed rule would increase the restrictions that apply to the Mexican Hass avocado import program; APHIS' phytosanitary justification for these restrictions has been that Hass avocados from Mexico present a risk of introducing fruit flies into the United States. Because avocados from California and Florida are not subject to such restrictions despite the presence of fruit flies in those States, the restrictions on Mexican Hass avocados constitute discriminatory treatment under article 712.4 of the North American Free Trade Agreement (NAFTA), which states, in part, that ''Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party . . . where identical or similar conditions prevail.''

Response: Fruit flies are not the only pests of concern addressed by the regulations; there are seed and stem pests as well. However, even if fruit flies were the only pest of concern, we do not believe that our restrictions on the movement of Mexican Hass avocados is in any way discriminatory, as avocados are specifically listed as regulated articles in all three of our domestic fruit fly quarantines in 7 CFR part 301, *i.e.*, Mexican fruit fly (§§ 301.64 through 301.64–10), Mediterranean fruit fly (§§ 301.78 through 301.78–10), and Oriental fruit fly (§§ 301.93 through 301.93–10).

Comment: The proposed rule, which would increase the restrictions that apply to the Mexican Hass avocado import program, is at odds with Mexico's request that APHIS consider expanding both the number of States to which Mexican Hass avocados could be shipped and the length of the shipping season. It has been scientifically and practically demonstrated that the Hass avocado is not a fruit fly host, so APHIS does not have the scientific basis to adopt additional restrictions or even maintain some of its current restrictions (NAFTA article 712.1). In the absence of a scientific basis for their application, those restrictions could be viewed as disguised restrictions on trade (NAFTA articles 712.5 and 713.3).

Response: Although we do consider commercially grown Hass avocados to be a nonpreferred host for fruit flies, and thus a low risk for introducing fruit flies, we do not yet possess conclusive, published evidence that they are a nonhost as asserted by the commenter. We understand that Mexico is working on research in that area, and we would certainly consider conclusive evidence proving the nonhost status of Hass avocados as the grounds for changes to the Mexican avocado import program, as well as to our domestic fruit fly regulations. That being said, however, it is important to remember that fruit flies are not the only pests of concern addressed by the requirements of the

Mexican Hass avocado import regulations. Those regulations also address the risks presented by the avocado seed pests *Heilipus lauri, Conotrachelus aquacatae, C. perseae,* and *Stenoma catenifer,* as well as the stem weevil *Copturus aguacatae.*

Proposed Amendments to Stickering Requirement

In our proposed rule, we had proposed to amend the current fruit-stickering requirement of § 319.56–2ff(c)(3)(vi) of the regulations to require that the stickers not only bear the Sanidad Vegetal registration number of the packinghouse, but that they also bear the letters ''M/US'' after that number, and that those stickers be used only for fruit produced in accordance with § 319.56–2ff for export to the United States. The Mexican Government officials who responded to the proposed rule objected to the proposed limitations on the use of the stickers on the grounds that such limitations are an intrusion on Mexico's sovereignty. Those officials stated that APHIS does not have the authority to restrict Mexican producers from using any particular label on fruit that is distributed within Mexico, arguing that only Mexico can issue regulations affecting its domestic market.

Our intent in proposing those amendments to the stickering requirement was to ensure that the stickers would serve their intended purpose of making it easier to identify Mexican-origin avocados and would further allow us to differentiate between program fruit and nonprogram fruit that may have been smuggled into the United States. We acknowledge, however, that the proposed limitation on the use of the stickers would also have the effect of placing restrictions on domestic commerce within Mexico. Therefore, in deference to the concerns raised by the Mexican Government, we have omitted from this final rule the proposed requirement that the stickers required by § 319.56–2ff(c)(3)(vi) be used only for fruit produced in accordance with § 319.56–2ff for export to the United States. Further, because the inclusion of the letters ''M/US'' on the required sticker would serve no practical purpose in the absence of the proposed limitations on the use of the stickers, we have also omitted that aspect of the proposed rule from this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with APHIS and adds requirements regarding the repackaging of the avocados after their entry into the United States. These amendments will ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and will ensure that any boxes used to repackage the avocados in the United States bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico.

During the first shipping season for Mexican Hass avocados (November 1997 through February 1998), Mexico exported 13.296 million pounds of fresh avocados to the northeastern United States (U.S. Department of Agriculture, Foreign Agricultural Service, GAIN Report No. MX8140, November 24, 1998). During the second shipping season (November 1998 through February 1999), Mexico exported approximately 22 million pounds of fresh avocados to the northeastern United States.

Although it was anticipated that the importation of fresh Hass avocados from Mexico into the northeastern United States would result in lower prices for consumers and losses for domestic avocado producers, there has, to date, been little or no price change. The average wholesale price for avocados in the approved 19 northeastern States and the District of Columbia before the first shipping season began in November 1997 was $1.47 per pound, while after the shipping season began, the average wholesale price was $1.60 per pound. For the nonapproved States, the average wholesale prices were $1.46 before November 1997 and $1.57 after the first shipping season began. (The wholesale prices in the approved States are based on averages in Baltimore, Boston, Chicago, Detroit, New York, and Philadelphia; the wholesale prices for the nonapproved States are based on averages in Atlanta, Dallas, Los Angeles, Miami, San Francisco, and Seattle.) There was no statistically significant difference between the wholesale prices in the approved States and the nonapproved States before or after Mexican Hass avocados entered the domestic market. It should be noted that the average wholesale prices for fresh avocados in Mexico were only about $0.33 and $0.32 per pound in 1997 and 1998, respectively.

Because compliance agreements are available from APHIS free of charge, the only aspect of this rule that may result in additional costs for any U.S. entities, large or small, is the requirement for the marking of new boxes in cases where the avocados are repackaged after their entry into the United States. According to industry sources, the cost of the current identification requirements of the regulations, which includes both box marking and fruit stickering, is approximately $0.06 per pound. This cost is borne at the Mexican production/export end of the Hass avocado export program. If 20 percent of all shipments had to be repackaged following their arrival in the United States due to damage to original shipping boxes or for other reasons, this rule's requirement for the marking of new boxes could result in additional costs to U.S. importers or distributors of approximately $160,000 to $264,000. This estimate was arrived at using 20 percent of the total volume of Mexican Hass avocados shipped to the northeastern United States during the two export seasons of 1997–1998 (13.296 million pounds × $0.06 × 0.2 = $159,552) and 1998–1999 (22 million pounds × $0.06 × 0.2 = $264,000). However, because the $0.06 figure used includes the costs of the required stickering as well as box marking, it is likely that the costs to U.S. importers or distributors of marking new boxes in the United States will actually be less than that estimate. Since, as noted above, the price spread between domestic and Mexican wholesale prices is so large, U.S. importers and distributors may be able to absorb any additional costs resulting from the requirement for marking new boxes without passing those costs on to consumers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0129.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.56–2ff, new paragraphs (j) and (k) are added to read as follows:

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Mexico to the Northeastern United States.

* * * * *

(j) *Repackaging.* If any avocados are removed from their original shipping boxes and repackaged, the stickers required by paragraph (c)(3)(vi) of this section may not be removed or obscured and the new boxes must be clearly marked with all the information required by paragraph (c)(3)(vii) of this section.

(k) *Compliance agreements.* (1) Any person, other than the permittee, who moves or distributes the avocados following their importation into the United States (i.e., a second-party or subsequent handler) must enter into a compliance agreement with APHIS. In the compliance agreement, the person must acknowledge, and agree to observe, the requirements of paragraph (a) and paragraphs (f) through (k) of this section. Compliance agreement forms are available, free of charge, from local offices of Plant Protection and Quarantine, which are listed in local telephone directories. A compliance agreement will not be required for an individual place of business that only offers the avocados for sale directly to consumers.

(2) Before transferring the avocados to any person (i.e., a second-party handler) for movement or distribution, the permittee must confirm that the second-party handler has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the permittee transfers the avocados to a second-party handler who has not entered into a compliance agreement, APHIS may revoke the permittee's import permit for the remainder of the current shipping season.

(3) Any second-party or subsequent handler who transfers the avocados to another person for movement or distribution must confirm that the person receiving the avocados has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the second-party or subsequent handler transfers the avocados to a person who has not entered into a compliance agreement, APHIS may revoke the handler's compliance agreement for the remainder of the current shipping season.

(4) *Action on repeat violators.* APHIS may deny an application for an import permit from, or refuse to enter into a compliance agreement with, any person who has had his or her import permit or compliance agreement revoked under paragraph (k)(2) or (k)(3) of this section twice within any 5-year period.

(Approved by the Office of Management and Budget under control number 0579–0129.)

Done in Washington, DC, this 30th day of November 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–31513 Filed 12–3–99; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

Waste Confidence Decision Review: Status

AGENCY: Nuclear Regulatory Commission.

ACTION: Status report on the review of the Waste Confidence Decision.

SUMMARY: On September 18, 1990 (55 FR 38474), the Nuclear Regulatory Commission (NRC) issued the results of the first review of its Waste Confidence Decision, originally issued on August 31, 1984 (49 FR 34658). The purpose of the original Waste Confidence Decision was ''to assess the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or offsite storage will be available and to determine whether radioactive waste can be safely stored onsite past the expiration of existing facility licenses until offsite disposal or storage is available.'' (49 FR 34658). In 1984, the Commission concluded that there was reasonable assurance that safe disposal in a geologic repository is technically feasible, one or more repositories would be available by the years 2007–2009, and spent fuel will be managed in a safe manner until sufficient repository capacity is available. The 1990 review of this decision basically affirmed the findings of the original decision and further determined that spent fuel could be safely stored and managed under existing processes through the first quarter of the 21st century and 30 years beyond the licensed life for power reactor operation. In its 1990 review, the Commission stated that its next review of the waste confidence issues would occur in ten years. As the ten year period for review approaches, the Commission is issuing this notice on its intent with regard to further Waste Confidence reviews. The Commission is of the view that experience and developments since 1990 confirm the Commission's 1990 Waste Confidence findings. Thus, the Commission has decided that a comprehensive evaluation of the Waste Confidence Decision at this time is not necessary. The Commission would consider undertaking a comprehensive evaluation when the impending repository development and regulatory activities have run their course or if significant and pertinent unexpected events occur, raising substantial doubt about the continuing validity of the 1990 Waste Confidence findings.

FOR FURTHER INFORMATION CONTACT: Janet Kotra, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 415–6674.

SUPPLEMENTARY INFORMATION:

I. Background

In 1977, the Commission denied a petition for rulemaking wherein the U.S. Nuclear Regulatory Commission (NRC) was asked to determine whether radioactive wastes generated in nuclear power reactors can be disposed of without undue risk to public health and safety and to refrain from granting pending or future requests for reactor operating licenses until such finding of disposal safety was made. The Commission noted in its denial that it '' * * * would not continue to license reactors if it did not have reasonable

confidence that the wastes can and will in due course be disposed of safely.''

At about the same time, the Commission granted license amendments permitting expansion of the capacity of spent fuel storage pools at two nuclear power plants, finding that the actions would not endanger public health and safety. The Commission did not address the potential environmental consequences of such storage beyond the expiration of the reactors' operating licenses. Upon appeal of the license amendment decisions, the US Court of Appeals declined to stay or vacate the license amendments but remanded to NRC the question of whether reasonable assurance exists that an offsite storage solution will be available by the years 2007–2009, the expiration dates of the plants' operating licenses, and, if not, whether there is reasonable assurance that spent fuel can be stored safely at the reactor sites beyond those dates.

In response to the Court's remand, NRC conducted a generic rulemaking to assess the degree of assurance that radioactive wastes can be disposed of safely, to determine when disposal or offsite storage will be available, and to determine whether the wastes can be stored safely at reactor sites beyond the expiration of existing facility licenses until offsite disposal or storage is available. This rulemaking came to be known as the ''Waste Confidence'' proceeding. On August 31, 1984 (49 FR 34658; 49 FR 34688), the Commission issued five findings, accompanied by a final rule, codified at 10 CFR 51.23, incorporating the findings as the basis for excluding case-by-case consideration of environmental effects of extended onsite storage of spent fuel in reactor and spent fuel storage facility licensing proceedings. The Commission's basic conclusions were that there was reasonable assurance that safe disposal in a geologic repository is technically feasible, that one or more repositories would be available by the years 2007–2009, and that spent fuel will be managed in a safe manner until sufficient repository capacity is available.

In the 1984 Decision, the Commission noted that its decision with respect to the availability of a repository for disposal was unavoidably in the nature of a prediction, and indicated that it would review its conclusions should significant and pertinent unexpected events occur or at least every five years until a repository is available. The first review was completed in 1990 (55 FR 38474; September 18, 1990). The conclusions reached and the findings made in the Commission's 1990 review of the original Waste Confidence Decision were:

1. The Commission finds reasonable assurance that safe disposal of radioactive waste and spent fuel in a mined geologic repository is technically feasible. (This finding is identical to the finding in the original Waste Confidence Decision in 1984).

2. The Commission finds reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and that sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial high-level radioactive waste and spent fuel originating in such reactor and generated up until that time. (This finding revised the finding in the original decision that a mined geologic repository would be available by the years 2007 to 2009.)

3. The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level waste and spent fuel. (This finding is identical to the finding in the original Waste Confidence Decision in 1984).

4. The Commission finds reasonable assurance that, if necessary, spent fuel can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations. (This finding is basically identical to that in the original Waste Confidence Decision with the addition of the consideration of license renewal and spent fuel storage 30 years beyond the licensed life for operation of a reactor).

5. The Commission finds reasonable assurance that safe independent onsite or offsite spent fuel storage will be made available if such storage capacity is needed. (This finding is identical to the finding in the original Waste Confidence Decision in 1984).

In issuing the 1990 review of the Waste Confidence Decision, the Commission extended the cycle for future reviews from every five years to every ten years. The rationale for this extension was that predictions of repository availability are best expressed in terms of decades rather than years. The Commission also affirmed its original statement that it would reevaluate its Decision at any time whenever significant and pertinent unexpected events occur, such as major shifts in national policy or a major unexpected institutional development, or new technical information.

II. Ongoing Repository Development and Spent Fuel Storage Activities

We are now nearing the end of the ten year period since the last review of the Waste Confidence Decision. Since the 1990 revisions of the Waste Confidence findings, the U.S. Department of Energy's (DOE) program for characterizing a single site at Yucca Mountain, Nevada, as a potential geologic repository has progressed and is nearing completion. DOE published a viability assessment on the proposed repository in December of 1998 and a draft environmental impact statement (EIS) in August of 1999. It is expected that DOE will complete a final EIS in 2000, such that a recommendation with regard to suitability of the Yucca Mountain site, pursuant to the Nuclear Waste Policy Act of 1982, as amended (NWPA), can be made in 2001. If DOE is able to advise the President that the Yucca Mountain site is suitable for development as a repository, and the President accepts the Secretary of Energy's recommendation, DOE intends to submit a license application to NRC in 2002. In addition, NRC has proposed 10 CFR Part 63 which would establish a framework for licensing consideration of the repository. Similarly, the Environmental Protection Agency (EPA) has published its proposed standards for repository licensing. Thus, there has been substantial progress toward consideration and possible licensing of a repository.

As to spent fuel storage capabilities and capacity, the NRC has continued to review commercial dual-purpose spent fuel dry cask storage and transportation system designs and site-specific license applications for onsite dry storage of spent fuel to meet the interim storage needs of reactor licensees. In addition, the NRC is reviewing an application for an away-from-reactor Independent Spent Fuel Storage Installation (ISFSI), and a second application is expected in fiscal year 2000. The NRC staff has noted substantial advances in spent fuel storage—the certifications of a number of new spent fuel storage cask designs; additional interim dry cask storage capacity at power reactor sites; the NRC's establishment of a Spent Fuel Project Office to more effectively focus on interim spent fuel storage and management—since waste confidence findings were last reviewed in 1990.

These considerations confirm and strengthen the Commission's 1990 findings and lead the Commission to conclude that no significant and unexpected events have occurred—no major shifts in national policy, no major unexpected institutional developments, no unexpected technical information—that would cast doubt on the Commission's Waste Confidence findings or warrant a detailed reevaluation at this time. As a result, a formal review of these activities now would not call into serious question the Commission's Waste Confidence findings, as updated in 1990. The Commission, therefore, is not undertaking any modification to the findings codified in 10 CFR 51.23. However, when the nearer term activities on repository development and licensing are concluded, there may be implications for the Waste Confidence findings. If warranted, the Commission will consider undertaking a comprehensive review at that time.

III. The Next Review

The appropriate trigger for the next review could be a combination of events or it could be a single event. For example, any significant delays in DOE's repository development schedule or a decision by the Secretary of Energy to not recommend Yucca Mountain as a candidate site might necessitate a reevaluation of the Commission's Waste Confidence Decision. Thus, the Commission would consider undertaking a comprehensive reevaluation of the Waste Confidence findings when the impending repository development and regulatory activities run their course or if significant and pertinent unexpected events occur, raising substantial doubt about the continuing validity of the Waste Confidence findings.

Dated at Rockville, Maryland, this 30th day of November, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–31506 Filed 12–3–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–39]

Amendment to Class E Airspace; Emmetsburg, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

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

DATES: The direct final rule published at 64 FR 48088 is effective on 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 2, 1999 (64 FR 48088). 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 comment period, the regulation would become effective on December 30, 1999. 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 November 18, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–31520 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–42]

Amendment to Class E Airspace; Malden, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

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

DATES: The direct final rule published at 64 FR 49374 is effective on 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rue with a request for comments in the **Federal Register** on September 13, 1999 (64 FR 49374). 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 December 30, 1999. 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 November 18, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–31522 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–43]

Amendment to Class E Airspace; Sikeston, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule, confirmation of effective date.

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

DATES: The direct final rule published at 64 FR 49373 is effective on 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Tariff Division,

Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 13, 1999 (64 FR 49373). 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 December 30, 1999. 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 November 18, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–31521 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–91]

Establishment of Class E Airspace; Burlington, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes a Class E airspace area at Burlington, VT (KBTV) to provide for controlled airspace for those aircraft executing instrument approaches to the Burlington International Airport at times when the Burlington Air Traffic Control Tower is closed. This Class E airspace area will be effective during the specific dates and times established by Notice to Airmen, and thereafter published in the Airport/Facility Directory.

DATES: Effective 0901 UTC, February 24, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 5, 2000.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 99–ANE–91, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: ''9-ane-airspace@faa.gov''

The official docket file may be examined from 8:00 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays, in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7049; fax (781) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7586; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: The airspace in the vicinity of the Burlington International Airport, Burlington, VT (KBTV) currently falls within the Burlington Class C airspace area. That Class C area provides controlled airspace within, among other areas, a 5-mile radius of the Burlington International Airport from the surface to 4,400 feet above sea level. The Burlington Class C area currently operates continuously, as does the Burlington Airport Traffic Control Tower (ATCT). Once the Burlington ATCT changes its operating hours, the Burlington Class C area will not provide adequate controlled airspace in the vicinity of the airport during those hours when the Burlington ATCT is closed. This action establishes a Class E airspace area at Burlington, VT to provide controlled airspace from the surface with a 5-mile radius of the Burlington International Airport for those aircraft executing instrument approaches to Burlington at times when the Burlington ATCT is closed. This Class E airspace area will be effective during the specific dates and times established by Notice to Airmen, and thereafter published in the Airport/Facility Directory. Class E airspace designations for airspace area extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written 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

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the rule might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ANE–91.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does 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 rule.

The FAA has determined that this regulation is non-controversial 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) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact 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, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6002 Class E airspace areas designated as extending upward from the surface of the earth

* * * * *

ANE VT E2 Burlington, VT [New]
Burlington International Airport, VT
(Lat. 44°28′17″ N, long. 73°09′10″ W)

Within a 5-mile radius of Burlington International Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Issued in Burlington, MA, on November 18, 1999.

Arthur E. Gumtau,

Acting Manager, Air Traffic Division New England Region.

[FR Doc. 99–31518 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–48]

Amendment to Class E Airspace; Hutchinson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Hutchinson Municipal Airport, Hutchinson, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 3, GPS RWY 13, GPS RWY 21, and GPS RWY 31 Standard Instrument Approach Procedures (SIAPs) to serve Hutchinson Municipal Airport, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 3, GPS RWY 13, GPS RWY 21, and GPS RWY 31 SIAPs in controlled airspace.

In addition, the Hutchinson Instrument Landing System (ILS) and coordinates have been added to the text header.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 3, GPS RWY 13, GPS RWY 21, and GPS RWY 31 SIAPs, include the Hutchinson ILS and coordinates, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This final rule is effective on 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 30, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–48, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 3, GPS RWY 13, GPW RWY 21, and GPS RWY 31 SIAPs to serve the Hutchinson Memorial Airport, KS. The amendment to Class E airspace at Hutchinson, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Hutchinson Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, 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. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. 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

Although this action is in the form of a final rule and was to preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, and arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–48.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

This proposed rule does not have Federalism implications, as defined in Executive Order No. 13132, because it does 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 proposed rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reason 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 7400.9G, Airspace Designations and Reporting Points, dated September 10, 199, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE KS E5 Hutchinson, KS [Revised]

Hutchinson Municipal Airport, KS
(Lat. 38°03′56″ N., long. 97°51′38″ W.)
Hutchinson VORTAC
(Lat. 37°59′49″ N., long. 97°56′03″ W.)
SALTT LOM
(Lat. 38°07′25″ N., long. 97°55′36″ W.)
Hutchinson ILS localizer
(Lat. 38°03′31″ N., long. 97°51′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Hutchinson Municipal Airport, and within 4 miles each side of the Hutchinson ILS localizer northwest course extending to 16 miles northwest of the SALTT LOM, and within 4 miles each side of the ILS localizer back course extending from the 6.8-mile radius to 7.4 miles southeast of the airport, and within 4 miles each side of the 042° radial of the Hutchinson VORTAC extending from the 6.8-mile radius to 7.4 miles northeast of the airport, and within 4 miles each side of the 222° radial of the Hutchinson VORTAC extending from the 6.8-mile to 11.2 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 18, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–31517 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–41]

Amendment to Class E Airspace; Herington, KS; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Herington, KS, and corrects an error in the spelling of Herington as published in the **Federal Register** September 2, 1999 (64 FR 48086), Airspace Docket No. 99–ACE–41.

DATES: The direct final rule published at 64 FR 48086 is effective on 0901 UTC, December 30, 1999. This correction is effective on December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT

Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On September 2, 1999, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Herington, KS (FR document 99–22890, 64 FR 48086, Airspace Docket No. 99–ACE–41). An error was subsequently discovered in the spelling of Herington. This action corrects that error. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error in the spelling of Herington and confirms the effective date to the direct final rule.

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 December 30, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the spelling of Herington, as published in the **Federal Register** on September 2, 1999 (64 FR 48086), (**Federal Register** Document 99–22890; page 48087, column three) is corrected as follows:

§ 71.1 [Corrected]

ACE KS E5 Herington, KS [Corrected]

On page 48087, in the third column, correct the text header by removing Herrington and substituting Herington.

On page 48087, in the third column, correct lines 2, 6 and 8 in the airspace designation by removing Herrington and substituting Herington.

Issued in Kansas City, MO on November 18, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–31519 Filed 12–3–99; 8:45 am]

BILLING CODE 49103–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 32

RIN 3038–AB43

Trade Options on the Enumerated Agricultural Commodities

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) in April 1998, removed a long-standing prohibition on the offer and sale of off-exchange trade options on certain agricultural commodities subject to a number of regulatory requirements. On August 31, 1999, the Commission proposed to amend a number of those requirements. 64 FR 47452. The Commission is adopting as final those proposed amendments. In particular, the Commission is permitting cash settlement and offset or cancellation of agricultural trade options. It is also eliminating the transaction-specific disclosure statement, revising the summary disclosure statement provided to customers when opening an account and streamlining the registration requirements for Agricultural Trade Option Merchants (ATOMs) and their sales agents and certain reporting and recordkeeping requirements. The Commission believes that these amendments will increase the commercial utility of agricultural trade options while maintaining basic customer protections.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5260, or electronically at [Parchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

In April 1998, the Commission promulgated interim final rules to permit the trading of agricultural trade options subject to various regulatory requirements.[1] 63 FR 18821 (April 16, 1998). These requirements provided a number of customer protections, including limitations on the types of instruments or strategies permitted to be traded, registration of ATOMs, disclosure of risks to option buyers, financial safeguards, and recordkeeping. No one has applied for registration as an ATOM since the interim rules became effective in June 1998. Some observers have suggested that certain of the interim final rules' provisions discourage participation, and agricultural trade options would be offered more readily if the rules were modified.[2]

A. Proposed Revisions to the Agricultural Trade Option Rules

Based in part on those views, the Commission published a notice of proposed rulemaking (proposed rulemaking) reconsidering a number of the requirements of the agricultural trade option rules ''with a view toward maintaining their basic customer protection while increasing the

[1] Generally, the offer or sale of commodity options is prohibited except on designated contract markets. 17 CFR 32.11. One of several specified exceptions to the general prohibition on off-exchange options is for ''trade options.'' ''Trade options'' are off-exchange options ''offered by a person having a reasonable basis to believe that the option is offered to'' a person or entity within the categories of commercial users specified in the rule, where such commercial user ''is offered or enters into the commodity option transaction solely for purposes related to its business as such.'' 17 CFR 32.4(a). However, this exception from the general ban on off-exchange options does not apply to trade options on the agricultural commodities enumerated in the Commodity Exchange Act (Act). 7 U.S.C. 1a(3). A full statement of the statutory and regulatory history is provided in the notice of final rulemaking promulgating the interim final rules. 63 FR 18821 (April 16, 1998).

[2] The Commission receives the views of a cross-section of the agricultural sector through its Agricultural Advisory Committee (AAC). The AAC, at its meeting on April 21, 1999, engaged in a detailed discussion of various policy issues raised by possible rule alternatives. Subsequently, nine organizations representing a broad cross-section of production agriculture submitted to the Commission their common views on these issues by letter dated April 23, 1999. The nine producer organizations were: (1) American Farm Bureau Federation, (2) National Association of Wheat Growers, (3) National Corn Growers Association, (4) National Farmers Union; (5) National Pork Producers, (6) American Soybean Association, (7) National Cattlemen's Beef Association, (8) National Cotton Council of America, and (9) National Grain Sorghum Producers.

Additional letters were submitted by the Farm Credit Council (dated April 19, 1999), the Illinois Farm Bureau (dated April 21, 1999), the National Grain and Feed Association (NGFA) (dated June 15, 1999), the Chicago Board of Trade (CBT) (dated June 16, 1999), the National Grain Sorghum Producers (dated July 9, 1999), and the American Farm Bureau Federation, the National Association of Wheat Growers, the American Soybean Association and the National Farmers Union (joint letter dated August 9, 1999).

commercial utility of the instruments or trading strategies permitted and streamlining regulatory or paperwork burdens.'' 64 FR 47452 (August 31, 1999). In particular, the Commission proposed to streamline the registration requirements for ATOMs and their sales agents by, among other things, removing the training requirement for associated persons and limiting the number of principals that must certify that they are not subject to statutory disqualification from registration. In addition, the Commission proposed to permit cash settlement and offset or cancellation of agricultural trade options by removing the requirement that such options, if exercised, must result in physical delivery. The Commission also proposed to eliminate the transaction-specific disclosure statement and to revise the summary disclosure statement provided to customers when opening an account. The Commission also proposed to streamline certain reporting and recordkeeping requirements. It also considered, but did not propose, permitting producers to write call options or changing the $10 million exemptive level.

B. Comments

The Commission received a total of 22 comment letters, including those recommending that the Commission propose various amendments to the interim final rules. See note 2 *supra.* Overall, the comment letters expressed a wide range of opinions. Five commenters, including one academic, two introducing brokers (IBs), one commodity trading advisor (CTA)/IB and the National Introducing Brokers Association (NIBA) generally opposed the proposed changes. They expressed the view that the proposed amendments would weaken existing customer protections, increase the opportunity for fraud and abuse and facilitate poor business practices on the part of those offering or soliciting agricultural trade options.

Eight commenters, including four agribusinesses, three trade associations and one risk management firm, generally supported the proposed changes. They particularly supported the proposal to permit cash settlement and offset or cancellation of the option contracts, but argued that the Commission should go farther in easing the rule's requirements. They especially objected to the $10 million dollar exemption level and to the requirement that option vendors and their sales agents be registered with the Commission. In contrast, the nine producer organizations strongly supported retaining the registration requirement, including the associated right of a registrant's customers to bring grievances arising from a violation of the Act or Commission rules before the Commission's reparations forum, and opposed lowering the $10 million exemption level.[3]

II. The Final Rules

A. Registration

As the Commission noted in its proposed rulemaking, ''[t]he requirement that all market profession[als] be registered, and the authority to approve or revoke registrations, is an important means of policing conduct in a market.'' 64 FR 47453. As the Commission explained in the proposed rulemaking, with registration customers have available to them the Commission's reparations forum for dispute resolution.[4] Although there is ''substantial support for a registration requirement, both because of the higher level of customer protection it provides and a desire to have available the Commission's reparations forum for dispute resolution,'' potential agricultural trade option vendors are opposed to the registration requirement. Id. Accordingly, the Commission specifically invited comments in the proposed rulemaking on the issue.

The NGFA's comment letter opposed a registration requirement and urged the Commission to ''seriously consider notification as an alternative''.[5] NGFA's continued opposition to registration flows from its opposition to the availability of Commission reparations proceedings to customers to resolve disputes with ATOMs involving trade options. NGFA voiced particular concern that the availability of reparations to resolve disputes involving trade options might expose ATOMs to reparations cases involving cash contracts.[6]

In contrast, the nine producer organizations expressed strong support for maintaining the registration requirement. Other commenters, including NIBA, an academic and other Commission registrants agreed. In general, these commenters were of the view that registration of those offering or soliciting agricultural trade options is an essential customer protection which should be mandatory.

Based upon thorough and careful consideration of the comments, the Commission has determined to retain the current registration requirement, which includes the statutory right to seek redress of violations of the Act or Commission rules through Commission reparations proceedings. This is particularly appropriate because although ''some sectors of agriculture may have well-regarded industry arbitration fora available, many do not. For these sectors, reparations may be the only readily available non-judicial avenue for dispute resolution.'' 64 FR 47453.[7]

In retaining the registration requirement for ATOMs and their APs, the Commission notes that reparation proceedings are available only where a violation of the Act or Commission rules is alleged. Under the Commission's rules, the Director of the Office of Proceedings forwards a complaint and answer if the facts alleged so warrant. If no violation of the Act or Commission rules is alleged, the Director of the Office of Proceedings may terminate consideration of the filings. See, 17 CFR 12.26, 12.27. A dispute arising solely out of a cash market transaction, therefore, would be dismissed and not forwarded for adjudicatory action.

1. Simplification of the Registration Process

The Commission proposed a number of modifications based upon the acknowledged ''broad agreement that the registration procedures for ATOMs and their sales agents be streamlined

[3] Additional comments were submitted by the Chicago Board of Trade (CBT), the Chicago Mercantile Exchange (CME) and a futures commission merchant (FCM). The CBT concurred with many of the proposed changes, noting that it was ''pleased that the Commission has incorporated several of [the CBT's] recommendations into [the Commission's] proposed rulemaking.'' See the CBT's comment letter at p. 1. The CME did not address the specific issues raised in the proposed rulemaking.

[4] Specifically:

[S]ection 14 of the Act provides that 'any person complaining of any violation of any provision of this Act or any rule * * * issued pursuant to this Act by any person who is registered under this Act' may bring a reparations action [b]efore the Commission. Accordingly, complaints that do not relate to violations of the Act or Commission rules are not subject to Commission reparations proceedings.

Id.

[5] See the letter of September 30, 1999 from NGFA to the Commission.

[6] Other commenters, including three agribusinesses, concurred in NGFA's position. They noted that the reparations requirement might deter them, as well as others, from offering these instruments. One commenter, Consolidated Grain and Barge, Co., expressed particular support for the NGFA arbitration system. The CBT also supported rules permitting required dispute resolution under industry arbitration procedures such as the NGFA's trade rules.

[7] The Commission is also incorporating, as proposed, streamlined procedures clarifying the use of pre-dispute arbitration clauses for agricultural trade options and the procedures by which customers can waive their right to use Commission reparations procedures to resolve disputes with an ATOM.

and simple.'' Id. at 47454. Specifically, the Commission proposed removal of the requirement that ATOMs separately certify the truth of their principals' and APs' applications. The Commission also proposed to limit the principals required to file as part of an ATOM's application to those principals who exercise direct control over the ATOM's business affairs. In addition, the Commission proposed deletion of the mandatory six-hour training course for ATOMs' sales agents.

NIBA, the academic commenter and the registrants opposed the proposed amendments, particularly deletion of the mandatory six-hour training required of APs. NGFA, the agribusinesses, a trade association, and the CBT supported the proposed changes, although several opined that the proposed changes did not go far enough. The three agribusinesses particularly commended the Commission for proposing to delete the mandatory AP training requirement.

The Commission is adopting the proposed amendments to the registration procedures as final rules. In doing so, it has modified the definition of an AP, as provided in Commission Rule 3.13(a)(2)(ii), to include those who ''supervise directly,'' an ATOMs'' associated persons. The Commission also is modifying Rule 3.13(b) to state that those who ''supervise directly'' an ATOMs' associated persons, must register as an AP. These modifications clarify that only immediate supervisors of associated persons must register as APs (in addition to principals of the firm who control or direct the ATOM's activities) and must certify that they are not disqualified from registration under the Act. These modifications clarify that second or third tier supervisors are not covered by the registration and certification requirements.

In addition to the proposed amendments, the Commission requested comment on the relative burden and benefits of the current requirement that ATOMs notify the NFA when an associated person leaves its employ or when a new associated person begins. Generally, commenters did not respond to the request for comment. However, as some have observed, ATOMs, particularly those with a decentralized sales force, potentially will benefit from the requirement, which offers customers a means to determine whether an individual is duly authorized to offer and sell trade options on an ATOM's behalf. Accordingly, the Commission is retaining the requirement.[8]

2. Commission Processing of Applications

Seven commenters addressed specifically the Commission's request for comments on the possible benefits to ATOMs, their APs or potential customers from the Commission's direct processing of registration applications, and the relative costs of such a proposal. Four commenters opined that it would be more efficient for NFA to perform this administrative task on the Commission's behalf as the interim final rules currently provide.[9] Two commenters disagreed, raising concerns regarding the degree of regulatory oversight NFA will have in performing this function.

The Commission remains convinced that NFA should perform these functions on the Commission's behalf. In reaching this conclusion, the Commission found that the possible benefits to ATOMs and their APs or potential customers from the Commission's direct processing of registration applications did not outweigh the relative costs of such a proposal.[10] Accordingly, the Commission finds it appropriate that NFA, which has the capacity to process registration applications with only minor changes to its existing systems, will perform these functions.[11]

Finally, one commenter suggested that the Commission permit potential registrants to begin filing for registration with the NFA as ATOMs and their APs in reliance upon the amended registration conditions in advance of the effective date of the rules. The Commission will take no adverse action in connection with an ATOM and its APs processing or submitting registration materials with the NFA in reliance on these amended procedures in advance of the rule's effective date.[12] Because currently there are no registered ATOMs, to the extent that the amended rules increase the likelihood of registration and competition to be the first registered, an initial surge may cause administrative delay. This no-action position is in the public interest because it will enable ATOMs and their APs an initial period during which to process and submit their registrations with NFA so that all interested ATOMS may begin offering and selling trade options under the amended rules as soon as the rules become effective, in time for the coming crop year. This will provide producers with greater availability of instruments and choice in vendors in time to meet their hedging needs for the coming crop year.

B. Cash Settlement

In proposing to permit cash settlement and offset or cancellation of agricultural trade options, the Commission noted its widespread support ''among all sectors of agriculture.'' Id at 47455. In addition, the Commission proposed to require ATOMs to provide customers with an account statement following the termination, cancellation, cash settlement or amendment of an option's expiration date (rolling the contract). In making this proposal, the Commission explained that:

> [C]ustomers could have expected to have their accounts settled upon physical delivery, and this requirement will ensure that customers who cash settle their contracts are provided with similar information. Moreover, by receiving an accounting and knowing with certainty the outcome of their closed position, customers should better be able to ascertain the potential outcome of entering into a subsequent transaction.

Id.[13]

The majority of commenters strongly approved of the proposed change,

[8] Under prior Commission Rule 3.13(c)(2), when an AP ceased to be associated with an ATOM, the ATOM was required to notify NFA of that disassociation within 20 days of the disassociation's occurrence. The Commission has revised Rule 3.13(c)(2) to extend this notification time period to 45 days to enable smaller businesses to perform this notification as part of their routine month-end accounting.

[9] Under the interim final rules, the Commission delegated to NFA the authority to directly process applications for registration as an ATOM or an AP of an ATOM.

[10] As the Commission explained in the proposed rulemaking, during the 1980s, it:

> [C]ompletely transferred [its registration administrative functions] to NFA * * * and no longer has systems in place to process [registration applications such as those filed by ATOMs or their APs]. Accordingly, the Commission would have to rebuild this capability from the ground up before it could begin reviewing and approving registrations once again. Moreover, rebuilding such administrative systems would, in the short-run, compete for technical resources that are being devoted to Y2K compliance.

64 FR 47454.

[11] NGFA expressed that the Commission should clarify what degree of ''regulatory authority'' NFA will have in processing applications. In this regard, as explained by the Commission in its proposed rulemaking, these final rules, like the prior interim final rules, ''strictly limit NFA's role. NFA does not become a self-regulatory authority for ATOMs simply by administratively processing their registration applications on the Commission's behalf. NFA exercises no regulatory authority over the offer or sale of agricultural trade options by ATOMs as a consequence of that administrative function, nor do ATOMs or their APs thereby become members of NFA.'' Id.

[12] Although ATOMs and their APs may have their registration applications processed in reliance upon the amended rules, unless they are registered in compliance with the current rules, they may not offer or sell these instruments until the rule amendments are effective.

[13] The Commission also noted that ''[i]n addition, the Disclosure Statement continues to advise potential purchasers that trade options are required to have a business purpose and are not to be used for speculation.'' Id.

noting that it is ''critical'' to increasing the ''effectiveness and flexibility of these products for both buyers and sellers.'' [14] A minority of commenters opposed the proposal, however, voicing concern that if cash settlement is permitted, agricultural trade options ''could easily develop into an off-exchange traded speculative marketplace.''

The Commission is adopting the rule as proposed, including the requirement that ATOMs provide customers with an account statement following the termination, cancellation, cash settlement or amendment of an option's expiration date (rolling the contract). The Commission is also clarifying that commercial enterprises eligible to be ATOMs include those selling inputs used in producing the commodity as well as banks that routinely finance businesses involved in the production, processing or handling of the commodity. 64 FR 47455.[15]

C. Risk Disclosure, Customer Account Information and Reports to the Commission

1. Risk Disclosure

The interim final rules required that customers be provided with both a general, summary disclosure statement upon opening an account and transaction-specific disclosures before entering into a specific transaction.[16] However, as noted by the Commission in the notice of proposed rulemaking, representatives of both potential trade option vendors and customers agreed that many of the transaction-specific disclosures could be made in the summary disclosure statement and others readily ascertainable from the face of the option contract itself, thus permitting the elimination of the transaction-specific disclosure requirement. *Id.* Accordingly, the Commission proposed to streamline risk disclosure by revising the summary disclosure to include some of the material that formerly was included in the transaction-specific disclosure. Id.

Although two commenters supported retention of the current risk disclosure rules, a number of commenters described the proposed amendments as ''positive.'' [17] The Commission is adopting the rules as proposed.

2. Customer Account Information

In addition to proposing revisions to streamline the risk disclosure requirements, the Commission proposed to amend the requirements relating to reporting of account information to customers.[18] As explained in the proposed rulemaking:

> A number of sources, including several state-level representatives of producers and commodity first handers, suggested that the requirements that ATOMs provide customers with account-related information potentially created too great a paperwork burden for smaller firms. * * * Similarly, some have observed that oral contracting is still the prevailing means of transacting business in certain agricultural cash markets, and they suggest that the interim rules, which require agricultural trade option contracts to be written, should be amended to reflect that reality. In this regard, state law has recognized this practice by recognizing the validity of such oral contracts when they have been confirmed in writing.

64 FR 47455–47456.

One commenter opined that ''verbal confirmation is not an acceptable business practice.'' The Commission agrees that best business practice is for all such communications to be in writing, including the option contract itself at the time the contract is made. However, there was consensus among representatives of potential vendors and purchasers that the Commission's rules should be amended to correspond more closely to current practice permitted under state law. Accordingly, the Commission is adopting the rule amendments as proposed, permitting ATOMs to enter into a contract orally, with subsequent written confirmation.[19] The written confirmation, which must be signed by the ATOM, must include all material terms of the option contract. The rules further permit use of oral communications and notice to customers with respect to account information.

3. Reports to the Commission

The interim rules required ATOMs to file reports on volume and open interest four times a year with the NFA. In response to this requirement, the Commission observed that there was ''widespread support among agricultural groups for reducing ATOMs required reports.'' 64 FR 47456. In light of this, the Commission proposed to reduce periodic reporting to one annual report, filed by the ATOM with the Commission within 90 days of the end of its fiscal year.

Commenters addressing this specific proposed change offered a variety of views. One commenter, an agribusiness, disfavored having this reporting requirement, indicating that while the Commission was proceeding in the right direction by reducing the number of required reports, ultimately, it should delete the requirement all together. However, other commenters, including two agribusinesses and NGFA, voiced their support for this proposed amendment. In particular, one agribusiness stated that ''the switch to annual reporting will greatly reduce the paperwork required to participate in the program.''

Taking these comments into consideration, the Commission believes it appropriate to reduce the periodic reporting requirement that ATOMs file reports on volume and open interest four times a year with the NFA, to one annual report, filed by the ATOM with the Commission within 90 days of the end of its fiscal year, as proposed. Also as proposed, the Commission is retaining authority to obtain information as needed for regulatory purposes through inspections of the books and records of a particular firm and to conduct a market-wide survey, by special call, in order to evaluate the success of the rules. The information that would be required in a special call is specified in the rules.

The Commission is also revising, as proposed, the requirement that, except for funds used to purchase exchange-traded contracts as cover, ATOMs keep in segregation 100% of customer funds paid up front. In its rules governing the offer or sale of dealer options, another type of over-the-counter option, the Commission required the option grantor to hold not less than 90% of funds paid by a customer in segregation (17 CFR

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[14] See the CBT's letter of September 30, 1999 to the Commission.

[15] An FCM submitted a comment letter to the Commission requesting clarification on whether FCMs can register to become ATOMs. The Commission believes that an FCM may satisfy the requirements of Rule 32.13(a) and be allowed to become an ATOM. However, there are issues unique to FCMs, including possible procedures to address potential conflict of interest by a fiduciary's becoming the principal of an off-exchange transaction and the effect of that position on the FCM's required net capital. The Commission will consider these issues in a separate **Federal Register** release.

[16] The transaction-specific disclosure included information relating to the specific terms of a particular transaction. The ATOM was required to disclose the customer's worst possible financial outcome when the option premium was not collected up front or when an option contract was amended.

[17] Cargill, in its comment characterized them as ''reasonable'' and ''necessary.'' See the letter of September 30, 1999 from Cargill Grain Division to the Commission.

[18] Specifically, under prior Rule 32.13(b), ATOMs were required to provide customers with written confirmation of contracts within 24 hours of executions and within 48 hours of a customer request, a written response regarding the customer's account or position. In addition, ATOMs were required to notify customers in writing of an option's expiration within the coming calendar month.

[19] The Commission notes that a customer retains the right to have a written agricultural trade option contract and that, unless the customer chooses to contract orally, the ATOM must provide the agricultural trade option contract to the customer in writing.

32.6(a)). The Commission is applying that 90% requirement to agricultural trade options, as well. This will provide ATOMs with greater flexibility in structuring their businesses.

D. Required Contract Terms and Limitations on Certain Strategies

Commission final interim Rule 32.13(a)(6)(i)–(vii) required that agricultural trade option contracts specify a number of contract terms.[20] The Commission proposed to delete these design requirements on the grounds that the terms would be expected to be found in any fully-specified physical delivery option contract. Instead, the Commission proposed to include a statement in the Disclosure Document that option customers should be sure that the contract includes, and that the customer understands the operation of, all of the above contract provisions. The Commission believes that the proposal provides adequate customer protection while permitting ATOMS greater flexibility in specifying option contracts and is therefore adopting the change as final.

The Commission did not propose to change the existing requirement that a producer may write a call only to the extent that it is paired with a purchased or long put option in a window or fence strategy.[21] The Commission explained that, although some observers have suggested that producers, if they desire, should be able to grant or write call options if the position is covered by expected production, many producer representatives opposed changing the current requirement. As the Commission noted, this strategy:

> [I]s not riskless. For example, if the producer suffers a production shortfall or loss, the producer's liability could be significant. For this reason, many of the producer representatives opposed changing the interim rules in this respect.

Id.

Two commenters in addition to the nine producer organizations supported continuation of the prohibition against producers writing covered calls. Others disagreed, suggesting that the prohibition against producers writing covered call options should be lifted to allow the greatest flexibility possible in formulating risk management strategies. As explained by one trade association, ''[w]e believe the prohibition is an unnecessary restriction and could reduce the profit potential for an agricultural business and limit the potential for managing commodity price risk.''[22]

After careful consideration of the comments on this proposal, the Commission remains convinced that the current prohibition permitting call writing by producers only to the extent that the written call is paired with a purchased or long put option in a window or fence strategy should not be revised at this time. As the Commission stated in the proposed rulemaking, however, ''[i]n taking this position, the Commission is not ruling out its reconsideration after producers have had an opportunity to gain experience generally with the offer and sale of trade options.'' 64 FR 47456.

E. Exemption Level for Sophisticated Entities

The interim rules exempted transactions in which each party to the option contract had a net worth of not less than $10 million from compliance with all of the specific conditions for trading agricultural trade options. The Commission determined that the exemption should apply only to those entities with a very high net worth and that a greater level of regulatory protection was appropriate for transactions involving less well-financed entities. In implementing the exemption for sophisticated entities, the Commission observed that there was no consensus among commenters regarding what the exemption level should be, or whether there should be an exemption at all.

Several commenters remarked on the current exemption level. Overall, there continues to be a lack of consensus regarding lowering the exemption level. Although some commenters advocated lowering the dollar amount of the exemption level, others, including the producer organizations opposed any exemption from the amended requirements or advocated maintaining the exemption at the current level. In light of the wide diversity of opinion, the untested nature of the rules, and the very broad changes already being made, the Commission continues to believe that the current exemption level should not be reduced at this time.

III. Other Matters

A. Paperwork Reduction Act (PRA)

Rules 3.13(e), 32.6, 32.13(a), 32.13(d), 32.13(e), 32.13(f)(1), 32.13(F)(2)–(5) and 32.13(c) contain information collection requirements. As required by the PRA of 1995 (Pub. L. 104–13 (May 13, 1996)), the Commission submitted a copy of the proposed rules and the associated paperwork burden to the Office of Management and Budget (OMB) for its review (44 U.S.C. 3504(h)) and requested comments on the paperwork burden from the public. The Commission did not receive comments addressing this specific associated paperwork burden. The Commission did receive and address, however, comments concerning the information that would be collected under the proposed rules.

OMB previously approved the collection of information related to these rules as information collection 3038–0048, Off-Exchange Agricultural Options. The final rules adopted by the Commission, which have been submitted to OMB for approval, have the following paperwork burden:

Number of respondents: 3,605.

Estimated average hours per response: 5.59.

Frequency of response: On occasion and annually.

Number of responses per year: 4,115.

Annual reporting burden: 23,003.

This represents a reduction of 9,045 burden hours as a result of the rule changes adopted. Persons wishing to comment on the paperwork burden contained in the final rules may contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The Commission has not previously determined whether all or some agricultural trade option merchants should be considered ''small entities'' for purposes of the RFA and, if so, to analyze the economic impact on such entities. However, the Commission is requiring one of the conditions for registration as an agricultural trade option merchant to be maintenance of a minimum level of net worth. The Commission previously found that other entities which were required to maintain minimum levels of net capital

[20] These terms included the procedure for exercise, the expiration date and latest time on that date for exercise; the strike price; the total quantity of the commodity underlying the option; the quality or grade of commodity to be delivered if the option is exercised and any adjustments to price for deviations from stated quality or grade, or the range of, and a statement of the method for calculating such adjustments; the delivery location; the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges; and additional costs, if any, which may be incurred if the commodity option is exercised.

[21] See 64 FR 47456.

[22] See the letter of September 30, 1999 from the National Grain Trade Council to the CFTC.

were not small entities for purposes of the RFA. See, 47 FR 18618, 18619 (April 30, 1982). The Commission has also found, however, that one category of Commission registrant—introducing brokers (IBs)—which is required to maintain a minimum level of net capital, may include small entities for purposes of the RFA. Nevertheless, in addition to the $50,000 minimum net worth required for registration as an agricultural trade option merchant, such registrants must be in business in the underlying cash commodity. This will require that they have additional resources invested in order to qualify as an agricultural trade option merchant, in contrast to an IB whose additional investment beyond the minimum net capital may be relatively small. For this reason, the Commission believes that agricultural trade option merchants are more appropriately treated as not being small entities under the RFA. The Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures.

17 CFR Part 32

Commodity futures, Commodity options, Prohibited transactions, Trade options.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1)(A), 4c, and 8a, 7 U.S.C. 2, 6c, and 12A, as amended, the Commission hereby amends parts 3 and 32 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6c, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23; 5 U.S.C. 552, 552b.

2. Section 3.13 is revised to read as follows:

§ 3.13 Registration of agricultural trade option merchants and their associated persons.

(a) *Definitions.* (1) *Agricultural trade option merchant.* ''Agricultural trade option merchant'' means any person that is in the business of soliciting, offering to enter into, entering into, confirming the execution of, or maintaining a position in, transactions or agreements in interstate commerce which are not conducted or executed on or subject to the rules of a contract market, and which are or are held out to be of the character of, or are commonly known to the trade as, an ''option,'' ''privilege,'' ''indemnity,'' ''bid,'' ''offer,'' ''put,'' ''call,'' ''advance guarantee,'' or ''decline guarantee,'' involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. Provided, however, that any person entering into such transactions solely for the purpose of managing the risk arising from the conduct of his or her own commercial enterprise is not considered to be in the business described in this paragraph.

(2) Associated person of an agricultural trade option merchant. ''Associated person of an agricultural trade option merchant'' means a partner, employee, or agent (or any person occupying a similar status or performing similar functions) that:

(i) Solicits or accepts customers' orders (other than in a clerical capacity) or

(ii) Supervises directly any person or persons so engaged.

(b) *Registration required.* It shall be unlawful for any person in the business of soliciting, offering or selling the instruments listed in § 32.2 of this chapter to solicit, to offer to enter into, or to enter into, to confirm the execution of, or to maintain transactions in such instruments or to supervise directly persons so engaged except if registered as an agricultural trade option merchant or as an associated person of such a registered agricultural trade option merchant under this section.

(c) *Duration of registration.* (1) A person registered in accordance with the provisions of this section shall continue to be registered until the revocation or withdrawal of registration.

(2) Agricultural trade option merchants must notify the National Futures Association within forty five days when an associated person has ceased to be so associated.

(3) An associated person who ceases to be associated with a registered agricultural trade option merchant is prohibited from engaging in activities requiring registration under § 32.13 of this chapter or representing himself or herself to be a registrant until:

(i) A registered agricultural trade option merchant notifies the National Futures Association of the person's association; and

(ii) The associated person certifies to the National Futures Association that he or she is not disqualified from registration for the reasons listed in section 8a (2) and (3) of the Act; provided, however, no such certification is required when the associated person becomes associated with the new agricultural trade option merchant within ninety days from when the associated person ceased the previous association.

(d) *Conditions for registration.* (1) Applicants for registration as an agricultural trade option merchant must meet the following conditions:

(i) The agricultural trade option merchant must have and maintain at all times net worth of at least $50,000 computed in accordance with generally accepted accounting principles;

(ii) The agricultural trade option merchant must identify each of the natural persons who controls or directs the offer or sale of trade options or associated trading activity by the agricultural trade option merchant and any associated person of the agricultural trade option merchant and each such natural person must certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act; and

(iii) The agricultural trade option merchant must provide access to any representative of the Commission or the United States Department of Justice for the purpose of inspecting books and records.

(2) Applicants for registration as an associated person of an must meet the following conditions. Such persons must:

(i) Identify the agricultural trade option merchant with whom the person is associated or to be associated within thirty days of the person's registration; and

(ii) Certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act.

(e) *Applications for registration.* (1) The agricultural trade option merchant, including its principals, and associated persons of an agricultural trade option merchant must apply for registration on the appropriate forms specified by the National Futures Association and approved by the Commission, in accordance with the instructions thereto, including the separate certifications from each natural person that he or she is not disqualified for any of the reasons listed in sections 8a(2)

and (3) of the Act and such other identifying background information as may be specified.

(2) The agricultural trade option merchant's application must also include its most recent annual financial statements certified by an independent certified public accountant in accordance with generally accepted auditing standards prepared within the prior 12 months.

(3) These applications must be supplemented to include any changes in the information required to be provided thereon on a form specified by the National Futures Association and approved by the Commission.

(f) *Withdrawal of application for registration; denial, suspension and revocation of registration.* The provisions of §§ 3.51, 3.55, 3.56 and 3.60 shall apply to applicants for registration and registrants as agricultural trade options merchants and their associated persons under this part 3 as though they were an applicant or registrant in any capacity under the Act.

(g) *Withdrawal from registration.* An agricultural trade option merchant that has ceased or has not commenced engaging in activities requiring registration may withdraw from registration 30 days after notifying the National Futures Association on the specified form of its intent to do so, unless otherwise notified by the Commission. Such a withdrawal notification must include information identifying the location of, and the custodian authorized to release, the agricultural trade option merchant's records, a statement of the disposition of customer positions, cash balances, securities or other property and a statement that no obligations to customers arising from agricultural trade options remain outstanding.

(h) *Dual registration of associated persons.* An associated person of an agricultural trade option merchant may be associated with other registrants subject to the provision of § 3.12(f).

3. Section 3.14 is removed and reserved.

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

4. The authority citation for part 32 continues to read as follows:

Authority: 7 U.S.C. 2, 6c and 12a.

5. Section 32.2 is republished for the convenience of the reader:

§ 32.2 Prohibited transactions.

Notwithstanding the provisions of § 32.11, no person may offer to enter into, confirm the execution of, or maintain a position in, any transaction in interstate commerce involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice if the transaction is or is held out to be of the character of, or is commonly known to the trade as an ''option,'' ''privilege,'' ''indemnity,'' ''bid,'' ''offer,'' ''put,'' ''call,'' ''advance guarantee,'' or ''decline guarantee,'' except as provided under § 32.13 of this part.

6. Section 32.13 is revised to read as follows:

§ 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option on a physical commodity listed in § 32.2 by a person who is a producer, processor, or commercial user of, or a merchant handing or selling inputs used in the production of, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, or a bank routinely engaged in the financing of such businesses, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) That person is registered with the Commission as an agricultural trade option merchant and that person's associated persons and their supervisors are registered as associated persons of an agricultural trade option merchant under § 3.13 of this chapter.

(2) The option offered by the agricultural trade option merchant is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and such producer, processor, commercial user, or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(3) [Reserved]

(4) To the extent that the customer makes payment of the purchase price to the agricultural trade option merchant prior to option expiration or exercise, that amount:

(i) May only be used by the agricultural trade option merchant to purchase a covering position on a contract market designated under section 6 of the Act or part 33 of this chapter; and

(ii) Any amount not so used shall be treated as belonging to the customer until option expiration or exercise as provided under and in accordance with § 32.6.

(5) Producers may not:

(i) Grant or sell a put option; or

(ii) Grant or sell a call option, except to the extent that such a call option is purchased or combined with a purchased or long put option position, and only to the extent that the customer's call option position does not exceed the customer's put option position in the amount to be delivered. Provided, however, that the options must be entered into simultaneously and expire simultaneously or at any time that one or the other option is exercised.

(6) All option contracts, including all terms and conditions, offered or sold pursuant to this section shall be in writing, a signed copy of which shall be provided to the customer, or if the contract is verbal, it shall be confirmed in a writing which includes all terms and conditions, signed by the agricultural trade option merchant, and provided to the customer within 48 hours.

(7) Prior to the entry by a customer into the first option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a summary disclosure statement to the option customer. The summary disclosure statement shall include:

(i) The following statements in boldface type on the first page(s) of the summary disclosure statement:

This brief statement does not disclose all of the risks and other significant aspects of trading in community trade options. You are encouraged to seek out as much information as possible from sources other than the person selling you this option about the use and risks of option contracts before entering into this contract. The issuer of your option should be willing and able to answer clearly any of your questions.

Appropriateness of Option Contracts

Option contracts may result in the total loss of any funds you pay to the issuer of your option. You should carefully consider whether trading in such instruments is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances. The issuer of your option contract should be willing and able to explain the financial outcome of your option contract under different market conditions. You should also be aware that

this option is not issued by, guaranteed by, or traded on or subject to the rules of a futures exchange. You may be able to obtain a similar contract or execute a similar risk management strategy using an instrument traded on a futures exchange which offers greater regulatory and financial protections.

Costs and Fees Associated With an Option Contract

Before entering into an option contract, you should understand all of the costs associated with it. These include the option premium, commissions, fees, costs associated with delivery if the option requires settlement by delivery upon its exercise and any other charges which may be incurred. All of these costs and fees must be specified in the terms of your option contract.

Know and Understand the Terms of the Option Contract

Before entering into an option contract, you should know and understand all of the option contract's terms. All of the option contract's terms should be included in the written contract, or for a verbal agreement, in a written confirmation. You should receive a signed copy of either the written contract or of the written confirmation. Your option contract should include contract terms setting:

(A) The total quantity of commodity underlying the option contract;

(B) The strike price(s) of the option contract;

(C) The procedure for exercise of the option contract, including when you can exercise and the latest time and date for exercise;

(D) Whether the option can be offset or canceled prior to expiration;

(E) Whether settlement of the option is for cash or by delivery of the commodity;

(F) If settlement is by delivery, the delivery location or locations, the quality or grade of commodity to be delivered and how adjustments to price for deviations from stated quality or grade are determined;

(G) If settlement is by cash, the method for determining the cash-settlement price; and

(H) The cost and method of payment.

Business Use of Trade Options

In order to comply with the law, you must be buying this option for business-related purposes. The terms and structure of the contracts must therefore relate to your activity or commitments in the underlying cash market. Any amendments allowed to the option contract or its cancellation or offset prior to its expiration date must reflect changes in your activity, in your commitments in the underlying cash market or in the carrying of inventory. Producers are not permitted to enter into short call options unless the producer also enters into a long put option contract for the same amount or more of the commodity, at the same time and with the same expiration date. Producers are not permitted to sell put options, whether alone or in combination with a call option.

Dispute Resolution

If a dispute should arise under the terms of this trade option contract, you have the right to choose to use the reparations program run by the Commodity Futures Trading Commission or any other dispute resolution forum provided to you under the terms of your customer agreement or by law. For more information on the Commission's Reparations Program contact: Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5250.

Acknowledgment of Receipt

The Commodity Futures Trading Commission requires that all customers receive and acknowledge receipt of this disclosure statement. The Commodity Futures Trading Commission does not intend this statement as a recommendation or endorsement of agricultural trade options. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission, nor has the Commission passed upon the accuracy or adequacy of this disclosure statement. Any representation to the contrary is a violation of the Commodity Exchange Act and Federal regulations.

(ii) The following acknowledgment section:

I hereby acknowledge that I have received and understood this summary risk disclosure statement.

_____

(Date)

_____

Signature of Customer

(8) An agricultural trade option merchant may not require a customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter by an agreement or understanding to submit a claim or grievance to a specified settlement procedure prior to the time a claim or grievance arises. An agricultural trade option merchant, when notifying a customer of its intent to submit a claim or grievance to arbitration under a pre-existing agreement, must advise the customer in writing that the customer within forty-five days may elect to seek reparations under Section 14 of the Act and part 12 of this chapter.

(b) *Report of account information.* Agricultural trade option merchants must provide to customers with open positions the following information:

(1) Within two business days of the offset, cancellation or settlement of the option for cash, or of the amendment of the expiration of the option, a statement of profit or loss on the transaction and on the account;

(2) In response to a customer's request, current commodity price quotes, all other information relevant to the customer's position or account, and the amount of any funds owed by, or to, the customer within one business day if responding orally and within two business days if responding in writing;

(3) Written, verbal or electronic notice of the expiration date of each option which will expire within the subsequent calendar month.

(c) *Recordkeeping.* Agricultural trade option merchants shall keep full, complete and systematic books and records together with all pertinent data and memoranda of or relating to agricultural trade option transactions, covering transactions, and all written or electronic customer solicitation materials. Agricultural trade option merchants shall maintain such books and records as specified in § 1.31 of this chapter, and report to the Commission as provided for in this paragraph (c) and paragraph (d) of this section and as the Commission may otherwise require by rule, regulation, or order. Such books and records shall be open at all times to inspection by any representative of the Commission and the United States Department of Justice.

(d) *Reports.* Agricultural trade option merchants must file annual reports with the Commission at its Washington, DC, headquarters within ninety days after the close of the agricultural trade option merchant's fiscal year, in the form and manner specified by the Commission, which shall contain the following information:

(1) By commodity and put, call or combined option

(i) Total number of new contracts entered into during the reporting period;

(ii) Total quantity of commodity underlying new contracts entered into during the reporting period;

(iii) Total number of contracts outstanding at the end of the reporting period;

(iv) Total quantity of underlying commodity outstanding under option contracts at the end of the reporting period;

(v) Total number of options exercised during the reporting period; and

(vi) Total quantity of commodity underlying the options exercised during the reporting period.

(2) Total number of customers by commodity with open option contracts at the end of the reporting period.

(e) *Special calls.* Upon special call by the Commission for information relating to agricultural trade options offered or sold on the dates specified in the call, each agricultural trade option merchant shall furnish to the Commission within the time specified the following information as specified in the call:

(1) All positions and transactions in agricultural trade options, including information on the identity of agricultural trade option customers and on the value of premiums, fees, commissions, or charges other than

option premiums, collected on such transactions.

(2) All related positions and transactions for future delivery or options on contracts for future delivery or on physicals on all contract markets.

(3) All related positions and transactions in cash commodities, their products, and by-products.

(f) *Internal controls.* (1) Each agricultural trade option merchant registered with the Commission shall prepare, maintain and preserve information relating to its written policies, procedures, or systems concerning the agricultural trade option merchant's internal controls with respect to market risk, credit risk, and other risks created by the agricultural trade option merchant's activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in agricultural trade options; policies for hedging or managing risk created by trading activities in agricultural trade options, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities.

(2) The financial statements of the agricultural trade option merchant must on an annual basis be audited by a certified public accountant in accordance with generally accepted auditing standards.

(3) The agricultural trade option merchant must file with the Commission a copy of its certified financial statements within 90 days after the close of the agricultural trade option merchant's fiscal year.

(4) The agricultural trade option merchant must perform a reconciliation of its books at least monthly.

(5) The agricultural trade option merchant:

(i) Must report immediately if its net worth falls below the level prescribed in § 3.13(d)(1)(i) of this chapter, and must report within three days discovery of a material inadequacy in its financial statements by an independent public accountant or any state or federal agency performing an audit of its financial statements, such report to be made to the Commission by facsimile, telegraphic or other similar electronic notice; and

(ii) Within five business days after giving such notice, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy.

(6) If the agricultural trade option merchant's net worth falls below the level prescribed in § 3.13(d)(1)(i) of this chapter, it must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under paragraph (a)(4) of this section that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

(g) *Exemption.*

(1) The provisions of §§ 3.13, 32.2, 32.11 of this chapter and this section shall not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than $10 million or the party's obligations on the option are guaranteed by a person which has a net worth of $10 million and has a majority ownership interest in, is owned by, or is under common ownership with, the party to the option.

(2) Provided, however, that § 32.9 continues to apply to such option transactions.

Issued this 29th day of November, 1999, in Washington, DC, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–31453 Filed 12–3–99; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–24177, IA–1846; File No. S7–22–98]

RIN 3235–AH02

Temporary Exemption for Certain Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that permits an investment adviser to advise an investment company under a temporary contract that the investment company's shareholders have not approved. The amendments expand the circumstances in which the exemption provided by the rule is available, to include a merger or similar business combination involving an investment company's adviser. The amendments also lengthen the maximum duration of the temporary contract. The amendments will permit more investment advisers to rely on the rule rather than seek individual exemptions from the Commission, and will continue to protect the interests of investors pending their vote on a new advisory contract.

EFFECTIVE DATE: The rule amendments will be effective December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Penelope W. Saltzman, Senior Counsel, (202) 942–0690, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') today is adopting amendments to rule 15a–4 (17 CFR 270.15a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or the ''Act'').[1]

Table of Contents

I. Executive Summary

The Commission is adopting amendments to rule 15a–4 under the Investment Company Act, the rule that permits an investment adviser to an investment company (''fund'') to serve for a short period of time under a contract that shareholders have not approved (''interim contract''). The amendments expand and clarify coverage of the rule by:

- Clarifying the timing of the board of directors' approval of the interim contract;

[1] Unless otherwise noted, all references to ''amended rule 15a–4,'' ''rule 15a–4, as amended,'' or any paragraph of the rule will be to 17 CFR 270.15a–4, as amended by this release.

• Allowing an adviser to serve under an interim contract after a merger or other business combination involving the adviser or a controlling person of the adviser (''adviser merger''); and

• Lengthening the maximum duration of the interim contract from 120 to 150 days.

The amendments are designed to permit more funds and investment advisers to rely on the rule rather than seek exemptive relief, while protecting fund investors until they can approve a new advisory contract.

II. Background

Section 15(a) of the Investment Company Act prohibits a person from serving as an investment adviser to a fund except under a written advisory contract that the fund's shareholders have approved.[2] Section 15(a) also requires that an advisory contract terminate automatically if it is assigned.[3] This section is designed to give shareholders a voice in a fund's investment advisory contract and to prevent trafficking in fund advisory contracts.[4] An unintended effect of the law, however, may be to leave a fund without an investment adviser if the fund's contract with the adviser terminates before the fund's shareholders can vote on a new contract.[5] To prevent funds from being harmed by losing investment advisory services before shareholders can approve a new contract, the Commission in 1980 adopted rule 15a–4, which provides a temporary exemption from the requirement that a fund's shareholders approve its advisory contract. The rule permits a fund to be advised under a short-term contract until shareholders can vote on a new contract.[6]

Rule 15a–4 was designed to deal with unforeseeable assignments of advisory contracts by permitting the board to act on an emergency basis to prevent the fund from being harmed by the absence of advisory services. The rule did not extend to an interim contract entered into after an adviser merger, which benefits the adviser, and which generally is foreseeable. When the rule was adopted, the Commission explained that when an adviser intends to assign its advisory contract under reasonably foreseeable circumstances, the investor protection concerns underlying section 15(a) were better fulfilled if shareholders had the opportunity to approve the relationship with the successor adviser before the adviser served the fund.[7] In recent years, as a result of greater consolidation in the financial services industry, applicants have sought an increasing number of exemptive orders in connection with adviser mergers. We have granted exemptive relief in these situations subject to conditions designed to protect shareholders pending their vote on a new advisory contract.

We proposed last year to amend rule 15a–4 to: (i) Clarify some of its provisions; (ii) expand the availability of the rule to include interim contracts entered into as a result of an adviser merger; and (iii) extend the period of time when a fund can be advised under an interim contract.[8] We received six comment letters in response to the proposal.[9] Commenters generally supported the proposed amendments, but each recommended specific changes.[10] Today we are adopting the amendments substantially as proposed, with minor modifications that reflect issues raised by commenters.[11]

III. Discussion

A. Board Approval

Under section 15 of the Act and rule 15a–4, the board of directors of a fund must approve an interim contract before or at the time the fund enters into the contract. If an advisory contract terminates as a result of an unforeseeable event, prior board approval of an interim contract may be impracticable.[12] To address this concern, we proposed to allow the board of directors seven calendar days (*i.e.,* one week) to approve an interim contract. At the suggestion of one commenter, we are extending the period to ten business days to provide investment advisers sufficient time to prepare documentation supporting approval of an interim contract and to give fund directors sufficient time to consider proposals for the new contract.[13] We also are adopting, as proposed, an amendment that permits the board to participate in a meeting to approve an interim contract by any means of communication that allows all participants to hear each other at the same time, such as a telephone conference.[14]

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[2] 15 U.S.C. 80a–15(a). Section 15(a) requires that a majority of the fund's outstanding voting securities approve the contract.

[3] 15 U.S.C. 80a–15(a)(4) (requiring that an advisory contract provide for its automatic termination upon assignment). An ''assignment'' of an investment advisory contract includes a transfer of the contract to another investment adviser, as well as a transfer of a controlling block of the investment adviser's voting securities. 15 U.S.C. 80a–2(a)(4).

[4] *Hearings on S. 3580 Before the Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong. 3d Sess. 253 (1940) (statement of David Schenker).

[5] This situation could occur if, for example, a controlling shareholder of the fund's adviser suddenly dies and control of the adviser passes to an heir. *See* Temporary Exemption for Certain Investment Advisers, Investment Company Act Release No. 23325 (July 22, 1998) [63 FR 40231 (July 28, 1998)] (''Proposing Release'') at nn.5–6 and accompanying text.

[6] The rule permits a fund to be advised under a temporary contract when (i) the fund's directors or shareholders terminate or decide not to renew the contract or (ii) a fund's advisory contract is assigned (and therefore terminates) under circumstances in which the investment adviser, or a controlling person of the adviser, does not receive any money or other benefit. Under the rule, the fund's board of directors, including a majority of directors who are not interested persons (''independent directors''), must approve the interim contract, and the compensation paid under the interim contract must not exceed the compensation under the previous contract. Rule 15a–4(a)–(b). *See* Exemptions for Certain Investment Advisers and Principal Underwriters of Investment Companies, Investment Company Act Release No. 11005 (Jan. 2, 1980) (45 FR 1860 (Jan. 9, 1980)).

[7] Exemptions for Certain Investment Advisers and Principal Underwriters of Investment Companies, Investment Company Act Release No. 10809 (Aug. 6, 1979) (44 FR 47100 (Aug. 10, 1979)) at text preceding n.11. As noted in the Proposing Release, funds also typically do not participate in adviser mergers, and their interests generally are not represented in the transaction. *See* Proposing Release, *supra* note 5, at text following n.20.

[8] Proposing Release, *supra* note 5.

[9] The commenters included two closed-end fund investors, an investment adviser, a trade association, a bar association, and a law firm. The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC (File No. S7–22–98).

[10] Two commenters suggested that the Commission address certain issues that arise in connection with the approval of advisory contracts by closed-end fund shareholders. Because these issues relate specifically to shareholder votes on new advisory contracts, and not to an exemption from the shareholder approval requirement, we have not addressed these issues in the final rule.

[11] In addition to the changes described below, we are adopting certain technical modifications to the rule, such as including in the definition of the term ''fund'' a series of an investment company. *See* amended rule 15a–4(a)(1).

[12] *See* Proposing Release, *supra* note 5, at n.11 and accompanying text.

[13] Amended rule 15a–4(b)(1)(ii). The ten-day period for board approval does not apply to interim contracts following adviser mergers, which are discussed below.

[14] Section 15(c) of the Act requires the board to meet ''in person'' to approve an advisory contract. 15 U.S.C. 80a–15(c). Directors must be physically present to satisfy the ''in person'' requirement. *See* Investment Company Amendments Act of 1969, S. Rep. No. 184, 91st Cong., 1st Sess. 39 (1969); Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 334–35 (1966); Provisions of Investment Company Amendments Act of 1970 (Pub. L. 91–547) Concerning Approval of Investment Advisory Contracts and Other Matters Which Should Be Considered by Registrants in Connection with their 1971 Annual Meetings, Investment Company Act Release No. 6336 (Feb. 2, 1971) [36 FR 2867 (Feb. 11, 1971)] at n.3 and accompanying text.

B. Adviser Mergers

As noted above, the Commission proposed to expand the availability of rule 15a–4 to permit funds to operate under an interim advisory contract when the previous contract is terminated as a result of an adviser merger (*i.e.,* when the adviser or a controlling person of the adviser has received a benefit in connection with the assignment of the previous contract). We are adopting these amendments substantially as proposed. The amendments largely codify individual exemptive orders we have issued over the years, and are designed to preserve the quality of advisory or other services that the fund received before the merger until the shareholders have voted on a new contract.

Under amended rule 15a–4, the board of directors, including a majority of independent directors, must find that the scope and quality of the advisory services to be provided under the interim contract are at least equivalent to the scope and quality of the services provided under the previous contract.[15] The board also must approve the interim contract before the previous contract is terminated.[16] The interim contract must contain generally the same terms and conditions as the previous contract, and provide compensation to the adviser that is no greater than the compensation under the previous contract.[17] The interim contract also must provide that the board may terminate the contract with no more than ten days written notice.[18] Finally, any fees earned by the adviser during the interim contract must be placed in an interest-bearing escrow account and be paid to the adviser only if shareholders approve the new advisory contract.[19] If shareholders do not approve the new contract, the adviser may receive the lesser of the fees provided under the interim contract or the costs of providing services under the interim contract.[20]

We are not adopting suggestions by several commenters that the rule allow fund boards broad discretion in approving interim contracts after adviser mergers.[21] Exemptive relief in those circumstances would be inconsistent with the statutory requirement that *shareholders* approve advisory contracts.[22] Thus, the amendments are designed to preserve the status quo while shareholder approval is sought for a new contract. The conditions are intended to prevent the new adviser (or new parent of the adviser) after an adviser merger from materially altering the services provided to a fund until shareholders have had an opportunity to consider those changes when they vote on a new advisory contract.

Finally, we are not adopting the suggestion of some commenters that advisers receive the full fee under the interim contract without escrow arrangements, regardless of whether shareholders approve the new advisory contract. Like our exemptive orders, the amendments permit the adviser to receive all of the fees due it under the interim contract if the new contract is renewed and shareholders have, in effect, ratified the interim contract. Unlike our exemptive orders, which precluded the adviser from receiving any fees due it under the interim contract when shareholders fail to approve the new advisory contract, the amendments permit the adviser to be compensated for its costs. We believe that this new approach sufficiently addresses the concerns of fund advisers without compromising investor interests.

C. Duration of Interim Contract

The amended rule extends the maximum duration of an interim contract from 120 days to 150 days, in order to provide additional time to solicit proxies and obtain a quorum of voting shareholders.[23] Although some commenters argued for a longer period,[24] our experience has shown that funds generally have not needed more than 150 days for an interim contract.[25]

IV. Effective Date

The amendments to rule 15a–4 will be effective December 13, 1999. This

[15] Amended rule 15a–4(b)(2)(iii). *See* Proposing Release, *supra* note 5, at nn.22–24 and accompanying text.

[16] Amended rule 15a–4(b)(2)(ii).

[17] Amended rule 15a–4(b)(2)(i), (v).

[18] Amended rule 15a–4(b)(2)(iv). Two commenters argued that this requirement is unnecessary and that any termination provisions should be left to the board's discretion. We believe that the termination clause helps to protect the fund by enabling the board to respond quickly to declining quality of services under the interim contract.

[19] The escrow account must be maintained with a bank or the fund's custodian. Amended rule 15a–4(b)(2)(vi)(A).

[20] Amended rule 15a–4(b)(2)(vi). Any amounts remaining in the account would be returned to the fund. *Id.*

The amended rule does not prohibit (as many of our exemptive orders have prohibited) the fund from paying costs of shareholder solicitation for approval of a new contract after an adviser merger. Nevertheless, if an advisory contract is terminated as a result of an adviser's action that benefits the adviser (such as an adviser merger), issues may arise under other sections of the Act if the fund pays the costs of soliciting shareholder approval of a new contract. *See* 1979 Proposing Release, *supra* note 5, at n.13. The 1979 Proposing Release notes that if a fund were to bear any of the costs caused by an adviser merger, including costs associated with conducting a special shareholders' meeting, payment of those costs might constitute compensation to the investment adviser and raise questions regarding the availability of section 15(f) (15 U.S.C. 80a–15(f)) (creating safe harbor under which investment advisers may receive a benefit in connection with a sale of securities of, or a sale of any other interest in, an investment adviser that results in an assignment of an investment advisory contract, if certain conditions are met). The 1979 Proposing Release further comments that a fund's payment of those costs also may raise questions under sections 15(a)(1) (15 U.S.C. 80a–15(a)(1)) (advisory contract must precisely describe all compensation to be paid under the contract) and 36(b) [15 U.S.C. 80a–35(b)] (investment adviser's fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by the fund or its shareholders)). *But see* Travelers Group Inc., et al., Investment Company Act Release Nos. 22873 (Nov. 3, 1997) (62 FR 60540 (Nov. 10, 1997)) (notice) and 22911 (Nov. 26, 1997) (65 SEC Docket 2962 (Dec. 23, 1997)) (order) (adviser to pay costs of soliciting shareholder approval of new advisory contract, except that if solicitation is in conjunction with fund's annual meeting at which other matters are to be discussed, fund may pay portion of costs).

[21] Two commenters, for example, recommended that the exemption related to adviser mergers contain only the conditions that apply to interim contracts in circumstances *other than* adviser mergers (*i.e.,* board approval and no increase in compensation). Another commenter suggested that instead of the specific terms and conditions proposed, the rule should require the board to find that the interim contract is in the ''best interests'' of shareholders, and allow the board to approve materially different terms and conditions in the interim contract when appropriate. These suggestions would increase the board's discretion by allowing it to reduce services under the interim contract or increase services for a higher fee.

[22] *See* text accompanying note 7, *supra.*

[23] In response to the suggestion of one commenter, and consistent with our exemptive orders, the amended rule also clarifies that the exemptive period begins as of the date the previous contract terminates. Amended rule 15a–4(a)(2)(ii).

[24] Three commenters recommended extending the period further, largely for administrative convenience. Two recommended a period of up to 180 days because of the increasing complexity of adviser mergers. One of these commenters and another commenter also advocated extending the exemptive period, for funds that hold annual shareholder meetings, until the next annual meeting. These funds are generally closed-end funds, the shares of which typically are listed on an exchange that requires listed companies to hold annual shareholder meetings. *See, e.g.,* New York Stock Exchange Listed Cmpany Manual ¶ 302.00. We are not adopting these suggested changes. Permitting an extension until the next annual meeting could result in an interim contract of up to one year. We believe that the shareholders' interest in limiting the duration of an advisory contract that they have not approved outweighs the possible cost savings to advisers if the shareholder vote is postponed beyond 150 days.

[25] In 1998, all applications for exemptive relief from section 15(a) concerning interim contracts in connection with an adviser merger, sought relief for 150 days or less, and half (10 out of 20) sought relief for periods between 60 and 120 days. The one applicant that sought to extend its original 120-day exemption for an additional 60 days, did so to explore possibilities of merging funds before seeking approval of new advisory contracts. *See* DG Investor Series, Investment Company Act Release Nos. 23420 (Aug. 31, 1998) (63 FR 47540 (Sept. 8, 1998)) (notice) and 23445 (Sept. 22, 1998) (68 SEC Docket 232) (order).

effective date is less than 30 days after publication so that funds and advisers may benefit sooner from the rule amendments.[26]

V. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments, but commenters did not address any specific costs or quantify any benefits.

We believe the amendments are likely to result in cost savings for investment advisers by removing the need to seek exemptive relief in the case of adviser mergers.[27] Based on orders issued in 1998, we estimate that the total annual cost savings for investment advisers resulting from the proposed amendments would be approximately $400,000, and possibly more. In 1998, the Commission issued 20 orders granting exemptive relief in connection with adviser mergers at an estimated cost to the applicants of $20,000 for each application.[28] We expect that cost savings could be greater in the future based on the steady increase in orders issued in connection with adviser mergers over the past four years.[29] In addition, we believe the conditions of the rule will not result in increased costs for funds or their investors. The condition regarding director findings should not be burdensome in view of the fact that section 15(c) already requires the fund's independent directors to review and approve the new advisory contract. In addition, we expect funds and advisers that are eligible for exemptive relief under circumstances other than after an adviser merger[30] will realize cost savings because directors may participate in the meeting to approve the advisory contract ''by any means of communication that allows all directors participating to hear each other simultaneously during the meeting.'' This provision should result in savings in time and travel costs.[31]

Unlike most prior exemptive orders, the amendments do not prohibit funds from paying costs associated with soliciting shareholder approval of a new advisory contract after an adviser merger. Thus, the amendments could result in increased costs for funds if they bear those expenses in the future. In most investment adviser business combinations, however, the advisers bear the costs of the transaction.[32] While we cannot predict what will happen after the rule is amended, we believe that advisers, consistent with their other obligations under the statute,[33] are likely to continue to pay these costs and, therefore, the amendments are not likely to result in increased shareholder solicitation costs for funds.

VI. Effects on Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[34] As discussed above, the Commission anticipates that the amendments to rule 15a–4 will result in cost savings for investments advisers, funds and investors. We also have considered, in addition to the protection of investors, whether the amendments adopted today will promote efficiency, competition or capital formation.

VII. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 relating to the amendments. A summary of the Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. We received no comments on the IRFA.

Current rule 15a–4 provides a temporary exemption in certain circumstances from the requirement that shareholders approve an investment advisory contract. The rule does not, however, cover interim contracts entered into as a result of adviser mergers. Due to the growing number of acquisitions and mergers in the financial services industry, the Commission has received an increasing number of applications for exemption from the shareholder approval requirement in connection with adviser mergers. In addition, funds have advised the Commission that the 120-day exemptive period in rule 15a–4 is too short to obtain shareholder approval of an advisory contract.

The amendments extend rule 15a–4 to adviser mergers, extend the length of the exemptive period to 150 days, and clarify the timing of board approval of the fund's advisory contract. The amendments significantly reduce the need to file exemptive applications, resulting in cost and time savings for funds and investment advisers.

Rule 15a–4 applies to funds (including business development companies (''BDCs'')) and their investment advisers.[35] The rule does not affect funds that do not have an external investment adviser (*i.e.*, unit investment trusts or other internally managed funds).[36]

An investment adviser is a small entity for purposes of the Regulatory Flexibility Act (''Reg. Flex. Act'') if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.[37] We estimate that approximately 165 out of 901 investment advisers that advise funds are small entities. A fund is a small entity for purposes of the Reg. Flex. Act if it, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[38] We estimate that approximately 222 out of 3,560 active management companies, and approximately 34 out of 62 BDCs are small entities.

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[26] *See* 5 U.S.C. 553(d)(1) (permitting exemptive rules to become effective less than 30 days after publication).

[27] One of the standard conditions to the adviser merger orders is that the costs of the exemptive application will be paid by the adviser or advisers. As discussed above, several commenters agreed that removing the need to apply for an exemptive order would be a benefit, although none provided any specifics on the amount of savings that might be realized.

[28] This number is based on an estimate of the average cost provided by attorneys in private practice who have prepared these type of exemptive applications. The cost of preparing an application, however, may vary significantly depending on the applicant.

[29] From 1995 through 1998, the Commission issued 6, 11, 13 and 20 exemptive orders each year in connection with adviser mergers.

[30] *See supra* note 6.

[31] Several commenters also agreed that this provision would be a benefit, but none quantified the savings that funds might realize.

[32] *See* 1 Thomas P. Lemke, *et al.,* Regulation of Investment Companies § 24.02[1][c].

[33] *See supra* note 20.

[34] 15 U.S.C. 80a–2(c).

[35] Section 59 of the Act (15 U.S.C. 80a–58) provides, among other things, that sections 15(a) and 15(c) of the Act apply to a BDC to the same extent as if it were a registered closed-end investment company.

[36] The vast majority of open-end and closed-end funds are externally managed. All face-amount certificate companies currently in existence are externally managed. The Commission does not keep statistics on how many BDCs are externally managed.

[37] 17 CFR 275.0–7

[38] 17 CFR 270.0–10.

We believe that the proposed amendments would decrease the burdens on small funds and small investment advisers by making it unnecessary for them to seek an exemptive order from the Commission in order to delay the shareholder vote required by section 15(a). The requirements of the rule, as explained above in section III, are designed to protect the interests of investment companies, including small funds and their shareholders, and therefore an exemption from any of those requirements for small entities would not be consistent with the protection of investors. We believe that the burden these requirements place on small advisers is minimal because the requirements generally are intended to maintain the status quo until the shareholder vote can be held.

The amendments require escrow arrangements that differ from the escrow arrangements required under most exemptive orders issued to date to funds seeking relief similar to that provided by the amendments. Similar to most exemptive orders, the amendments require the advisory fee to be paid under the interim contract to be placed in escrow. Contrary to most of these orders, however, the amendments allow an investment adviser to recover its costs of performing the interim contract if a fund's shareholders do not approve a new advisory contract. Prior exemptive orders generally required that all the escrowed fees be returned to the fund if shareholders did not approve a new contract with the investment adviser. This change from conditions imposed under prior exemptive orders is designed to allow shareholders to withhold profits under an interim contract when the shareholders reject a new contract with that adviser, while providing for compensation for services provided by the adviser. This provision may be of particular benefit to small advisers.

The Commission has not identified any overlapping or conflicting federal rules. We have considered alternatives to the proposed rule amendment that would accomplish the objective of the rule and minimize the impact on small entities. These alternatives include: (i) Establishing different compliance requirements that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

We believe that further clarification, consolidation, or simplification of the compliance requirements is not necessary. Standards established in the amendments contain performance, rather than design standards.[39] An exemption from coverage of the rule for small advisers or small funds would prevent those entities from benefiting from rule 15a–4 and would not be consistent with the protection of investors.

To obtain a copy of the FRFA, contact Penelope Saltzman, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

VIII. Statutory Authority

The Commission is amending rule 15a–4 pursuant to the authority set forth in sections 6(c) and 38(a) (15 U.S.C. 80a–6(c) and 80a–37(a)) of the Investment Company Act.

List of Subjects in 17 CFR Part 270

Investment companies, Securities.

Text of Final Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.15a–4 is revised to read as follows:

§ 270.15a–4 Temporary exemption for certain investment advisers.

(a) For purposes of this section:

(1) *Fund* means an investment company, and includes a separate series of the company.

(2) *Interim contract* means a written investment advisory contract:

(i) That has not been approved by a majority of the fund's outstanding voting securities; and

(ii) That has a duration no greater than 150 days following the date on which the previous contract terminates.

(3) *Previous contract* means an investment advisory contract that has been approved by a majority of the fund's outstanding voting securities and has been terminated.

(b) Notwithstanding section 15(a) of the Act (15 U.S.C. 80a–15(a)), a person may act as investment adviser for a fund under an interim contract after the termination of a previous contract as provided in paragraphs (b)(1) or (b)(2) of this section:

(1) In the case of a previous contract terminated by an event described in section 15(a)(3) of the Act (15 U.S.C. 80a–15(a)(3)), by the failure to renew the previous contract, or by an assignment (other than an assignment by an investment adviser or a controlling person of the investment adviser in connection with which assignment the investment adviser or a controlling person directly or indirectly receives money or other benefit):

(i) The compensation to be received under the interim contract is no greater than the compensation the adviser would have received under the previous contract; and

(ii) The fund's board of directors, including a majority of the directors who are not interested persons of the fund, has approved the interim contract within 10 business days after the termination, at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting.

(2) In the case of a previous contract terminated by an assignment by an investment adviser or a controlling person of the investment adviser in connection with which assignment the investment adviser or a controlling person directly or indirectly receives money or other benefit:

(i) The compensation to be received under the interim contract is no greater than the compensation the adviser would have received under the previous contract;

(ii) The board of directors, including a majority of the directors who are not interested persons of the fund, has voted in person to approve the interim contract before the previous contract is terminated;

(iii) The board of directors, including a majority of the directors who are not interested persons of the fund, determines that the scope and quality of services to be provided to the fund under the interim contract will be at least equivalent to the scope and quality of services provided under the previous contract;

(iv) The interim contract provides that the fund's board of directors or a majority of the fund's outstanding voting securities may terminate the contract at any time, without the payment of any penalty, on not more than 10 calendar days' written notice to the investment adviser;

[39] *See* amended rule 15a–4(b)(2)(iii).

(v) The interim contract contains the same terms and conditions as the previous contract, with the exception of its effective and termination dates, provisions governed by paragraphs (b)(2)(i), (b)(2)(iv), and (b)(2)(vi) of this section, and any other differences in terms and conditions that the board of directors, including a majority of the directors who are not interested persons of the fund, finds to be immaterial; and

(vi) The interim contract contains the following provisions:

(A) The compensation earned under the contract will be held in an interest-bearing escrow account with the fund's custodian or a bank;

(B) If a majority of the fund's outstanding voting securities approve a contract with the investment adviser by the end of the 150-day period, the amount in the escrow account (including interest earned) will be paid to the investment adviser; and

(C) If a majority of the fund's outstanding voting securities do not approve a contract with the investment adviser, the investment adviser will be paid, out of the escrow account, the lesser of:

(*1*) Any costs incurred in performing the interim contract (plus interest earned on that amount while in escrow); or

(*2*) The total amount in the escrow account (plus interest earned).

Dated: November 29, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–31333 Filed 12–3–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–097–FOR, Part I]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving part of an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions to its program concerning subsidence control, water replacement, performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. This final rule document addresses Illinois' revisions concerning subsidence control and water replacement. The primary focus of these revisions is to address changes required by the Energy Policy Act of 1992 regarding repair or compensation for material damage caused by subsidence from underground coal mining operations and replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, and to improve operational efficiency.

EFFECTIVE DATE: December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IL–5044), the Illinois Department of Natural Resources (Department) sent us an amendment to the Illinois program under SMCRA. The Department proposed to amend Title 62 of the Illinois Administrative Code (IAC) in response to our letters dated May 20, 1996, June 17, 1997, and January 15, 1999 (Administrative Record Nos. IL–1900, IL–2000, and IL–5036, respectively), that we sent to Illinois under 30 CFR 732.17(c). The amendment also includes changes made at the Department's own initiative.

We announced receipt of the amendment in the August 17, 1999, **Federal Register** (64 FR 44674). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on September 16, 1999. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to siltation structures, impoundments, performance bonds, and State inspections. We also identified some nonsubstantive editorial errors. We notified Illinois of these concerns and editorial problems by letter dated September 21, 1999 (Administrative Record No. IL–5048). Because we did not identify any concerns relating to Illinois' revisions for subsidence control and water replacement, we are separating Illinois' amendment into two parts. Part I concerns revisions to Illinois' regulations relating to subsidence control and water replacement. Part II concerns revisions to Illinois' regulations relating to performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. This final rule **Federal Register** document addresses IL–097–FOR, Part I.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings on Illinois' revisions pertaining to subsidence control and water replacement.

On March 31, 1995, OSM promulgated rules to implement new section 720(a) of SMCRA. Section 720(a), which took effect on October 24, 1992, as part of the Energy Policy Act of 1992, Public Law 102–486, 206 Stat. 2776, requires all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage caused by subsidence to noncommercial buildings and occupied residential dwellings and related structures. It also requires the replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations conducted after that date. By letter dated May 20, 1996, under 30 CFR 732.17(c), we notified Illinois to amend its program to be no less effective than

the changes which resulted from the enactment of section 720(a) of SMCRA and the promulgation of implementing Federal regulations on March 31, 1995 (Administrative Record No. IL–1900). On April 27, 1999, the U.S. Court of Appeals for the District of Columbia Circuit vacated two of the March 31, 1995, implementing regulations (*National Mining Ass'n* v. *Babbitt,* 98–5320, D.C. Cir. 1999). Illinois' August 2, 1999, amendment reflected the U.S. Court of Appeals' decision.

A. Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations.

1. The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation	Federal regulation
Definition of ''Drinking, domestic or residential water supply''.	62 IAC 1701. Appendix A	30 CFR 701.5.
Definition of ''Material damage''	62 IAC 1701. Appendix A	30 CFR 701.5.
Definition of ''Replacement of Water Supply''	62 IAC 1701. Appendix A	30 CFR 701.5.
Subsidence Control Plan	62 IAC 1784.20(a), Introductory paragraph	30 CFR 784.20(a), Introductory paragraph.
Subsidence Control Plan	62 IAC 1784.20(a)(1)	30 CFR 784.20(a)(1).
Subsidence Control Plan	62 IAC 1784.20(a)(2)	30 CFR 784.20(a)(2).
Subsidence Control Plan	62 IAC 1784.20(b), Introductory paragraph	30 CFR 784.20(b), Introductory paragraph.
Subsidence Control Plan	62 IAC 1784.20(b)(1)	30 CFR 784.20(b)(1).
Subsidence Control Plan	62 IAC 1784.20(b)(2)	30 CFR 784.20(b)(2).
Subsidence Control Plan	62 IAC 1784.20(b)(4)	30 CFR 784.20(b)(4).
Subsidence Control Plan	62 IAC 1784.20(b)(6)	30 CFR 784.20(b)(6).
Subsidence Control Plan	62 IAC 1784.20(b)(8)(A)	30 CFR 784.20(b)(7).
Subsidence Control Plan	62 IAC 1784.20(b)(10)	30 CFR 784.20(b)(9).
Subsidence Control	62 IAC 1817.121(a)(1)	30 CFR 817.121(a)(1).
Subsidence Control	62 IAC 1817.121(a)(3)	30 CFR 817.121(a)(2).
Subsidence Control	62 IAC 1817.121(a)(4)	30 CFR 817.121(a)(3).
Subsidence Control	62 IAC 1817.121(c)(1)	30 CFR 817.121(c)(1).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

2. Illinois made minor wording changes, including changing the term ''operator'' to the term ''permittee,'' throughout this amendment. Illinois also revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment. We find that these changes are nonsubstantive and will not make Illinois' regulations less effective than the Federal regulations.

B. Revisions to Illinois' Regulations That Relate to Replacement of Water Supplies

1. *62 IAC 1784.14(b)(1) Ground Water Information.* In the March 31, 1995, **Federal Register** (62 FR 16728–29 and 16732–33), we discussed the role that the counterpart Federal regulation at 30 CFR 784.14(b)(1) plays in obtaining baseline hydrologic information. This information is needed to make the finding for the probable hydrologic consequence determinations at 30 CFR 784.14(e) and to implement the performance standard for replacement of water supplies at 30 CFR 817.41(j). The Federal regulation requires that the application include the following information for the permit and adjacent areas: (1) the location and ownership of existing wells, springs, and other ground-water resources, (2) seasonal quality and quantity of ground water, and (3) ground water usage. By letter dated April 1, 1999 (Administrative Record No. IL–5042), we notified Illinois that its regulation at 62 IAC 1784.14(b)(1) did not require baseline hydrologic information for ground water overlaying or adjacent to underground workings. Although Illinois' regulation was worded the same as the counterpart Federal regulation at 30 CFR 784.14(b)(1), it did not mean the same because the Illinois definitions of ''permit area'' and ''adjacent area'' do not include the shadow area. ''Shadow area'' is the term used by Illinois to differentiate the surface over underground workings areas from the surface permitted and bonded areas. Therefore, Illinois' regulation would not require baseline hydrologic information for ground water overlaying or adjacent to underground workings.

In response to our letter, Illinois proposed several revisions to 62 IAC 1784.14(b)(1). Illinois revised subsection (b)(1) by adding the word ''shadow.'' This subsection now requires the permit application to contain the location and ownership of existing wells, springs, and other ground water resources; seasonal quality and quantity of ground water; and ground water usage for the permit, shadow, and adjacent areas. Illinois revised subsection (b)(1)(A) by redesignating it as subsection (b)(1)(A)(i) and by adding the phrase ''for the permit area and its adjacent area.'' The revised subsection requires that ground water quality descriptions include, at a minimum, for the permit area and its adjacent area: pH, total dissolved solids, hardness, alkalinity, acidity, sulfates, total iron, total manganese, and chlorides. Illinois added new subsection (b)(1)(A)(ii) to require that ground water quality descriptions include, at a minimum, for the shadow area and its adjacent area: pH, total dissolved solids, total iron and total manganese. For the permit, shadow, and adjacent areas, the Department allows the measurement of specific conductance in lieu of total dissolved solids if the permittee develops site specific relationships precisely correlating specific conductance to total dissolved solids for specific sites for all zones being monitored. Illinois revised subsection (b)(1)(B) by adding the phrase ''for the permit, shadow, and adjacent areas.'' The revised subsection requires ground water quantity descriptions for the permit, shadow, and adjacent areas to include, at a minimum, rates of discharge or usage and elevation of the potentiometric surface in the coal to be mined. It also requires this information for each water bearing stratum above the coal to be mined and in each water bearing stratum which may be

potentially impacted below the coal to be mined.

Illinois' revised regulation contains the same or similar requirements for the permit, shadow, and adjacent areas as the counterpart Federal regulation at 30 CFR 784.14(b)(1). Therefore, we find that Illinois' regulation at 62 IAC 1784.14(b)(1) is no less effective than the Federal regulation.

2. Illinois proposed the following revisions to its regulations at 62 IAC 1784.14 and 1817.41:

a. *62 IAC 1784.14(e) Probable hydrologic consequences determination.* Illinois added a new regulation provision at 62 IAC 1784.14(e)(3)(D) to require that the determination of the probable hydrologic consequences include the following finding:

> Whether the underground mining activities conducted after January 19, 1996 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit, shadow or adjacent areas.

With one exception, Illinois' proposed regulation is substantively identical to the counterpart Federal regulation at 30 CFR 784.14(e)(3)(iv). Illinois requires the finding to be made for underground mining activities conducted after January 19, 1996, while the Federal regulation requires the finding to be made for underground mining activities conducted after October 24, 1992.

b. *62 IAC 1817.41(j) Drinking, domestic or residential water supply.* Illinois replaced its currently approved provision for replacement of water supplies at 62 IAC 1817.121(c)(3) with the following new provision at 62 IAC 1817.41(j):

> Drinking, domestic or residential water supply. The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after January 19, 1996, if the affected well or spring was in existence before the date the Department received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in 62 Ill. Adm. Code 1780.21 and 1784.14 and the geologic information concerning baseline hydrologic conditions required in 62 Ill. Adm. Code 1780.22 and 1784.22 will be used to determine the impact of mining activities upon the water supply.

With one exception, Illinois' proposed regulation is identical to the counterpart Federal regulation at 30 CFR 817.41(j). Illinois requires the replacement of protected water supplies that are contaminated, diminished, or interrupted by underground mining activities conducted after January 19, 1996, while the Federal regulation requires the replacement of protected water supplies that are contaminated, diminished, or interrupted by underground mining activities conducted after October 24, 1992.

Illinois did not use the October 24, 1992, effective date for either of its regulations because its approved program did not require replacement of water supplies impacted by underground mining activities until January 19, 1996. The Illinois Surface Coal Mining Land Conservation and Reclamation Act prohibits retroactively applying regulations. The requirement to replace water supplies was effective upon passage of the Energy Policy Act of 1992. Permittees in both primacy States and Federal program States, as well as on Indian lands, were required to comply with this provision for their operations conducted after October 24, 1992. OSM and most State regulatory authorities ensured that complaints alleging violations of the nature covered under section 720(a) of SMCRA were documented and a record maintained until Federal regulations to enforce the Energy Policy Act were promulgated. The Federal regulations were promulgated effective May 1, 1995 (60 FR 16722, March 31, 1995). In the March 31, 1995, preamble for 30 CFR 843.25, we considered the possibility that a number of States may not authorize enforcement of counterpart provisions to section 720(a) of SMCRA, as of October 24, 1992 (62 FR 16743). We determined that in order to ensure compliance with section 720(a) in those States, OSM would provide direct Federal enforcement for any claims of damage caused by underground mining which occurs after October 24, 1992, and which predates State program amendments. The Federal regulation at 30 CFR 843.25(b) clarifies how direct Federal enforcement procedures will apply, to the extent they are initiated. The Federal regulation at 30 CFR 843.25(a) required us to make state-by-state determinations on how initial enforcement of the Energy Policy Act and implementing Federal regulations would occur. Enforcement could be accomplished through the State program amendment process, State enforcement, interim direct OSM enforcement, or joint State and OSM enforcement. In the July 28, 1995, **Federal Register** (60 FR 38677), we announced our decision on initial enforcement of underground coal mining water replacement requirements in Illinois. Based on the information provided by Illinois, we determined that initial enforcement of the water replacement requirements in Illinois was not reasonably likely to be required and that implementation would be accomplished through the State program amendment process. Illinois would enforce the requirements for replacement of water supplies after it amended its program in accordance with Section 720(a) of SMCRA and the implementing Federal regulations. Therefore, we find that Illinois' regulations at 62 IAC 1784.14(e)(3)(D) and 1817.41(j) are no less effective than the counterpart Federal regulations at 30 CFR 784.14(e)(3)(iv) and 817.41(j), respectively.

C. Revisions to Illinois' Regulations That Relate to Pre-subsidence Surveys

Since approval of its original program in 1983, Illinois has segregated underground mining into two specific subsidence control plan categories. The first category is termed planned subsidence in which the extraction of a high percentage of coal results in immediate, predictable, and controlled subsidence. The second category, termed unplanned subsidence, includes mines that extract a lesser percentage of coal and leave long term support pillars to prevent subsidence from occurring. Since 1983, Illinois has required all underground mining operations, regardless of whether they are planned or unplanned subsidence operations, to provide a general survey of all renewable resource lands, structures, and facilities in the permit application. Illinois also required all planned subsidence operations to provide additional details on the structures and a plan for performing condition surveys. This was done through its regulations at 62 IAC 1784.20(a) and requirements in its underground mining permit application form.

The general survey included topography and location of all structures and facilities, including pipelines, occupied dwellings, public buildings, and cemeteries. By policy, Illinois had required the general survey to include information on water supplies since its water replacement regulation became effective in 1996. This additional information included location, ownership, and depth of existing drinking, residential, and domestic water supplies, including private wells, municipal wells, and springs. Illinois has found that the information provided in the application (including the baseline hydrologic information required at 62 IAC 1784.14 and the general survey information required at 62 IAC 1784.20(a) and by policy) is sufficient to assess the need for a subsidence control plan. Illinois stated that in its history of the regulating

underground mining, it has never exempted an applicant from submitting a subsidence control plan. Illinois also stated that because of the productivity of the lands found in Illinois and the frequency with which structures are encountered, it is highly unlikely that it will grant any future underground mining applicants exemptions from submitting subsidence control plans. With 16 years of experience in subsidence monitoring and mitigation under the Illinois program, Illinois has found that it is not necessary to require site specific pre-subsidence condition surveys at the time of permit application. Based on extensive research on subsidence impacts to both crop land and ground water conducted from 1985 to 1995 by the Illinois Mine Subsidence Research Program, Illinois also determined that it is not necessary to require site specific pre-subsidence water surveys at the time of permit application. Illinois revised existing 62 IAC 1784.20 and 1817.121 to include provisions relating to pre-subsidence surveys.

1. *62 IAC 1784.20(b)(7) Subsidence Control Plan—Unplanned Subsidence.* Illinois added new subsection (b)(7) for those areas where unplanned subsidence is projected to be used. If impacts could reasonably be expected to cause material damage, this new subsection requires the subsidence control plan to include a description of procedures to determine the quantity and quality of drinking, domestic, and residential water supplies in accordance with 62 IAC 1817.121(a)(2). The applicant may request an exemption from conducting surveys of protected water supplies if the applicant can demonstrate that material damage resulting from underground mining is not likely to occur. The demonstration must be based on site specific geotechnical information, stability design, and historical performance provided under 62 IAC 1784.20(b)(3) and (b)(5).

2. *62 IAC 1784.20(b)(8)(B) Subsidence Control Plan—Planned Subsidence.* Illinois added new subsection (b)(8)(B) for those areas where planned subsidence is projected to be used. If impacts could reasonably be expected to cause material damage, it requires a description of procedures to determine the condition of structures and facilities and the quantity and quality of drinking, domestic, and residential water supplies. If the applicant can demonstrate that material damage resulting from underground mining is not likely to occur, the applicant may request an exemption from conducting structure condition surveys and/or surveys of drinking, domestic and residential water supplies required by 62 IAC 1817.121(a)(2). The applicant must base the demonstration on site specific geotechnical information, stability design, and historical performance provided under 62 IAC 1784.20(b)(3) and (b)(6).

3. *62 IAC 1817.121(a)(2) Measures to prevent or minimize damage.* Illinois' proposed regulation at 62 IAC 1817.121(a)(2) provides that, based on the requirements of 62 IAC 1784.20(b)(7) and (b)(8), the permittee must perform a survey of the condition of all structures and facilities that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence. The permittee must also perform a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area, subsidence shadow area, and adjacent area that could be contaminated, diminished, or interrupted by subsidence. The permittee must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such structures and facilities and the quantity and quality of drinking, domestic, or residential water supplies. The permittee must provide copies of the survey and any technical assessment or engineering evaluation to the property owner. Subsection (a)(2)(A) requires the permittee to perform or schedule the condition survey of structures and facilities a minimum of 120 days before undermining. The Department may approve a lesser time if justified by the permittee in writing. The permittee must provide a copy of the condition survey to the property owner and maintain a copy that it must provide to the Department upon request. The permittee must provide the Department with verification that the survey has been completed and forwarded to the property owner. Subsection (a)(2)(B) requires the permittee to complete the survey of drinking, domestic, and residential water supplies 120 days before the water delivery system is undermined. The Department may approve a lesser time if justified by the permittee in writing. The permittee must provide a copy of the water survey to the property owner and to the Department.

As shown above, Illinois requires site specific pre-subsidence condition surveys only for planned subsidence operations. Mines that demonstrate a well-engineered, stable mine plan (unplanned subsidence) are not required to perform a site specific condition survey. Applicants must base their demonstration on site specific geotechnical parameters that are evaluated by using acceptable engineering equations and programs. Site specific pre-subsidence water surveys are required for all operations, unless an exemption has been granted under 62 IAC 1784.20(b)(7) or (8)(B).

In a letter to us dated August 2, 1999 (Administrative Record No. IL–5044), Illinois discussed its regulation requirements at 62 IAC 1784.20(b)(7), 1784.20(b)(8)(B), and 1817.121(a)(2):

> Illinois is maintaining a requirement for site specific condition surveys in the performance standards at 62 IAC 1817.121 for planned subsidence operations only. Planned subsidence condition surveys were historically required as part of the permit application process to serve as a method of determining the degree of material damage after subsidence. Proposed 1784.20(b)(8) will provide a clear avenue to require pre-subsidence condition surveys for planned subsidence operations. Exemptions from performing the detailed condition surveys will only be granted if a demonstration is made that site specific mine design, geology, and geotechnical stability data, as well as past experience of the mine and mines in the region, will render subsidence damage unlikely.
>
> A survey of all private wells defining location, ownership, and depth will be required in the application for all underground mining operations. When an exemption from performing quantity and quality analysis of drinking, domestic, and residential water supplies is requested, the geotechnical evaluation of stability will be used to analyze the potential for mine subsidence. Mines that demonstrate a well-engineered, stable mine plan and demonstrate that overburden conditions will preclude impacts to water supplies will not be required to perform quantity and quality analysis. This demonstration will be based on site specific geotechnical parameters evaluated by using acceptable engineering equations and programs* * * . In addition to subsidence ground control evaluation, the thickness and lithology of the interburden between the well and the underground extraction area will be evaluated for potential roof failure propagation that could intercept the well bearing lithologic unit. Based on subsidence potential and potential roof failure impacts, wells will be site specifically evaluated for the necessity to sample and test for quality and quantity parameters prior to mining.

On April 27, 1999, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Federal regulation at 30 CFR 784.20(a)(3) that required permittees to conduct pre-subsidence structural condition and water surveys (*National Mining Ass'n* v. *Babbitt,* 98–5320, D.C. Cir. 1999). The U.S. Court of Appeals ruled that, after enactment of the Energy Policy Act, the agency possessed the authority to require such surveys. However, the U.S. Court of

Appeals vacated 30 CFR 784.20(a)(3) because the regulation defined the area within which the pre-subsidence structural condition survey is required by reference to the angle of draw. The U.S. Court of Appeals' decision indicates through the use of the term ''vacate'' that all of 30 CFR 784.20(a)(3) is no longer valid; therefore, there is no counterpart Federal regulation that requires a pre-subsidence structural condition and water survey. While the decision of the U.S. Court of Appeals clearly states that the rule requiring a pre-subsidence survey at 30 CFR 784.20(a)(3) must be vacated, it might be argued that the vacation order only applies to the portion of the rule pertaining to structures, which is tied to the angle of draw, and not to the portion of the rule pertaining to water supplies, which is tied to the permit area and adjacent area. In either case, we can approve the Illinois rules. Illinois' proposed regulations at 62 IAC 1784.20(b)(7), 1784.20(b)(8)(B), and 1817.121(a)(2) that require surveys, unless an exemption is obtained under 62 IAC 1784.20(b)(7) or 1784.20(b)(8)(B), are not based on whether or not a structure or water supply is located within an angle of draw. They are based on an analysis of site specific geotechnical information, stability design, and historical performance information. The State would use this analysis to determine whether impacts could reasonably be expected to cause material damage to structures or water supplies within the permit, shadow, and adjacent areas. Illinois has 16 years experience in regulating underground coal mining operations, including subsidence monitoring and mitigation. As discussed above, Illinois provided technical support for its proposed regulations, including the exemption provisions at 30 CFR 1784.20(b)(7) and 1784.20(b)(8)(B). Because of the experience obtained during its years of regulating underground coal mining operations and the technical studies conducted in the State, Illinois determined that the structure condition and water survey required by 62 IAC 1817.121(a)(2) is not necessary where, on a site specific basis, an acceptable engineering and technical analysis demonstrates that the proposed mine will not result in subsidence-related damage to structures or water supplies. Therefore, we find that Illinois' proposed requirements for a pre-subsidence survey are not inconsistent with the U.S. Court of Appeals' decision and are no less effective than the Federal regulation requirements relating to a pre-subsidence survey at 30 CFR 784.20(a). We also find that Illinois' requirements at 62 IAC 1784.20(b)(7), 1784.20(b)(8)(B), and 1817.121(a)(2) are not inconsistent with section 720(a) of SMCRA or the Federal regulation requirements at 30 CFR 784.20 and 817.121 concerning subsidence control. Therefore, we are approving them.

D. Revisions to Illinois' Regulations That Relate to Subsidence Control Plans

With the exceptions discussed in Finding C above and the following exceptions, Illinois' requirements for a subsidence control plan at 62 IAC 1784.20(b) are substantively identical to the Federal requirements at 30 CFR 784.20(b).

1. *62 IAC 784.20(b)(3).* Illinois recodified existing subsection (c) as new subsection (b)(3) and revised it to require the subsidence control plan to include a description of the lithology of underlying strata and geotechnical stability parameters. Illinois also required applicants to consider potential underground mining impacts on ground water supplies in the description of physical conditions.

(3) A description of the physical conditions, such as depth of cover, seam thickness, lithology of overlaying and underlying strata, and geotechnical stability parameters that affect the likelihood or extent of subsidence and subsidence related damage or potential underground mining impacts on ground water supplies.

Illinois added the requirement for a description of the underlying strata to emphasize the mine floor as part of the analysis. Illinois added the requirement for geotechnical stability parameters to emphasize the need for site specific test results or standard acceptable parameters for mine stability evaluation. Illinois added the requirement that the description of physical conditions consider the effect of ''potential underground mining impacts on ground water supplies'' to allow analysis of potential impacts to water supplies.

The counterpart Federal regulation at 30 CFR 784.20(b)(3) lists the minimal information that may be required to analyze the likelihood or extent of subsidence or subsidence-related damage. It requires ''a description of the physical conditions, such as depth of cover, seam thickness and lithology of overlaying strata, that affect the likelihood or extent of subsidence and subsidence-related damage.'' Illinois' revised regulation includes the Federal requirements for information and emphasizes additional information that it considers necessary for analysis of potential impacts from subsidence. Therefore, we find that Illinois' regulation at 62 IAC 1784.20(b)(3) is no less effective than the Federal regulation at 30 CFR 784.20(b)(3).

2. *62 IAC 1784.20(b)(5).* Illinois recodified existing subsection (d) as new subsection (b)(5). It requires a detailed description of the subsidence control measures for those areas where unplanned subsidence is projected to be used. Illinois also recodified existing subsections (d)(1) through (3) as subsections (b)(5)(A) through (C) without change. Existing subsection (d)(4) was recodified as new subsection (b)(5)(D) and was revised to require the description of the subsidence control measures to include those measures to be taken on the surface to prevent or minimize material damage or diminution in value of the surface. Illinois removed existing subsection (d)(5). New subsection (b)(5)(E) requires a description of the geotechnical and engineering analysis of the mining geology and geometry, percent extraction, and historic performance to substantiate a stable subsidence control plan.

Illinois' regulations at 62 IAC 1784.20(b)(5)(A) through (D) are substantively identical to the Federal regulations at 30 CFR 784.20(b)(5)(i) through (iv). The Federal regulations do not contain a specific counterpart to Illinois' provision at 62 IAC 1784.20(b)(5)(E). However, Illinois added subsection (b)(5)(E) to provide a clearer regulatory basis to require information such as floor, coal, and roof strength analysis as well as specific mine design past performance when considered necessary. Neither Illinois' regulation at 62 IAC 1784.20(b)(5) nor the counterpart Federal regulation at 30 CFR 784.20(b)(5) limit the information on subsidence control measures that a regulatory authority may require in the subsidence control plan. Therefore, we find that Illinois' regulation at 62 IAC 1784.20(b)(5) is no less effective than the Federal regulation at 30 CFR 784.20(b)(5).

3. *62 IAC 1784.20(b)(9).* New subsection (b)(9) requires a description of the measures to be taken in accordance with 62 IAC 1817.41(j) and 1817.121(c) to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures. At subsection (b)(9)(A) the applicant must provide procedures to determine the existence and degree of material damage or diminution of value or foreseeable use of the surface, structures and facilities, or water quality and quantity. The procedures must address resolution of disputes between the landowner and the permittee over the existence, amount,

level or degree of damage, such as third party arbitration. At subsection (b)(9)(B), the applicant must provide a plan for determining an appropriate present worth amount. The applicant must also describe how he or she will resolve disputes with the landowner over this amount. For example, the applicant could propose to use third party arbitration.

Illinois' proposed requirements at 62 IAC 1784.20(b)(9) are substantively the same as the Federal requirements at 30 CFR 784.20(b)(8). There are no Federal counterparts to Illinois' proposed regulations at 62 IAC 1784.20(b)(9)(A) and (B). However, Illinois' proposed regulations are based on requirements that we previously approved in 62 IAC 1784.20(f). They enhance the provisions of 62 IAC 1784.20(b)(9) by requiring additional information that the permittee will need in meeting the requirements of 62 IAC 1817.41, concerning replacement of protected water supplies, and 62 IAC 1817.121(c)(2), concerning repair or compensation for damage to structures and facilities. Therefore, we find that 62 IAC 1784.20(b)(9) is no less effective than the counterpart Federal regulation at 30 CFR 784.20(b)(8), and we are approving it.

E. Revisions to Illinois' Regulations That Relate to Subsidence Control

1. *62 IAC 1817.121(c)(2) Repair or compensation for damage to structures and facilities.* At subsection (c)(2), Illinois added the heading ''Repair or compensation for damage to structures and facilities.'' Illinois also revised subsection (c)(2) to require the permittee to promptly repair or compensate the owner for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. If the repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. These requirements apply only to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983.

Illinois' revised regulation at 30 CFR 1817.121(c)(2) is substantively the same as the Federal regulation at 30 CFR 817.121(c)(2) with the following exceptions:

a. The Federal regulation at 30 CFR 817.121(c)(2) requires the permittee to repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building, occupied residential dwelling, and related structures. At 62 IAC 1817.121(c)(2), Illinois uses the terminology ''structures and facilities'' in place of the Federal terminology. Illinois is using this terminology because its regulation at 62 IAC 1817.121 has required permittees to correct material damage from subsidence caused to all structures and facilities by repairing the damage or compensating the owner since its effective date on February 1, 1983. Because Illinois' terminology would include all non-commercial buildings, occupied residential dwellings, and related structures, we find that it will not make 62 IAC 1817.121(c)(2) less effective than the counterpart Federal regulation at 30 CFR 817.121(c)(2).

b. The Federal regulation at 30 CFR 817.121(c)(2) requires repair or compensation for material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. Illinois' regulation at 62 IAC 1817.121(c)(2) requires repair or compensation for material damage resulting from subsidence caused to any structure or facility that existed at the time of the coal extraction under or adjacent to the materially damaged structure. In its August 2, 1999, submittal, Illinois indicated that its change in language from ''existed at the time of mining'' to ''existed at the time of the coal extraction under or adjacent to the materially damaged structure'' makes it clearer as to how to monitor and track which structures are covered. Illinois stated that ''[i]t does not change the intent of covering all structures in existence at the time of mining.'' Because subsidence damage resulting from mining could not occur to a structure until coal is extracted and because Illinois interprets its language to cover all structures in existence at the time of mining, we find that this change in language will not make 62 IAC 1817.121(c)(2) less effective than the Federal regulation at 30 CFR 817.121(c)(2).

c. The Federal regulation requirements at 30 CFR 817.121(c)(2) apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992. Illinois' regulation requirements at 62 IAC 1817.121(c)(2) apply to subsidence-related damage caused by underground coal extraction conducted after February 1, 1983. Because the Illinois program has required permittees to correct material damage resulting from subsidence caused to any structures or facilities under 62 IAC 1817.121 since February 1, 1983, we are approving this regulation.

2. *62 IAC 1817.121(c)(3) Adjustment of bond amount for subsidence damage.* Existing subsection (c)(3) was removed. New subsection (c)(3) provides requirements for adjustment of the performance bond amount when subsidence-related material damage to protected land, structures or facilities occur or when contamination, diminution, or interruption to a water supply occurs. The Department must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing the damage, or in the amount of the decrease in value if the permittee will be compensating the owners, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply. The additional performance bond must remain in force until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. This time frame may be extended, but not to exceed one year, if the permittee demonstrates that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonable anticipated changes have occurred affecting protected water supplies. The permittee may also use appropriate terms and conditions for liability insurance to assure that the financial responsibility to comply with subsection (c) is in place.

Illinois' regulation requirements at 62 IAC 1817.121(c)(3) are substantively identical to the Federal regulation requirements at 30 CFR 817.121(c)(5) with the following exception: There is no direct Federal counterpart to Illinois' provision concerning the use of liability insurance to assure financial responsibility. However, the preamble to the Federal regulation at 30 CFR 817.121(c)(5) specifically addresses the option of using liability insurance that would be implemented by Illinois' provision (62 FR 16741-167842, March 31, 1995). In that preamble, we stated that under 30 CFR 800.14(c), if the liability insurance policy required under section 30 CFR 800.60 would provide coverage sufficient to fund the reclamation of subsidence damage, that

insurance may be substituted for increased bond. Therefore, we find that Illinois' proposed regulation at 62 IAC 1817.121(c)(3) is consistent with and no less effective than the counterpart Federal regulation at 30 CFR 817.121(c)(5).

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record No. IL–5045). By letter dated September 2, 1999, the Natural Resources Conservation Services (NRCS) provided comments (Administrative Record No. IL–5047). However, these comments did not pertain to the Illinois program revisions concerning subsidence control and water replacement. Therefore, we will discuss NRCS's comments in our future final rule document for IL–097–FOR, Part II.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposed amendment from the EPA (Administrative Record No. IL–5045). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. None of the revisions that Illinois proposed to make in this amendment pertain to historic properties. However, on August 10, 1999, we requested comments from both the SHPO and ACHP (Administrative Record No. IL–5045), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the revisions made to 62 IAC 1701. Appendix A, 1784.14, 1784.20, 1817.41, and 1817.121 in the amendment submitted by Illinois on August 2, 1999. We approve the regulations that Illinois proposed with the provision that they be published in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 913, which codify decisions concerning the Illinois program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Illinois to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this 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.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 1999.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
August 2, 1999	December 6, 1999	62 IAC 1701. Appendix A; 1784.14(b)(1), (b)(1)(A) (i) and (ii), (b)(1)(B), (e)(3)(D); 1784.20(a), (a)(1) and (2), (b), (b)(1) through (10); 1817.41(j); 1817.121(a)(1) through (4), (c)(1) through (3).

[FR Doc. 99–31516 Filed 12–3–99; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0016a; FRL–6482–9]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Road Salting and Sanding, Control of Installations, Revisions to Salting and Sanding Requirements and Deletion of Non-Ferrous Smelter Orders, Incorporation by Reference, and Nonsubstantive Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 1, 1995, the Governor of the State of Utah submitted State Implementation Plan (SIP) revisions for the purpose of establishing new requirements for road sanding and salting in section 9.A.6.7 (referred to by the State as section IX.A.6.g in a renumbering revision that has yet to be approved by EPA) of the SIP and in UACR R307–1–3, updating the incorporation by reference in R307–2–1, deleting obsolete measures for nonferrous smelters in R307–1–3, and nonsubstantive changes to R307–1–1 and R307–1–3. This action is being taken under section 110 of the Clean Air Act (Act).

DATES: This rule is effective on February 4, 2000 without further notice, unless EPA receives adverse comment by January 5, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the state documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used, we mean the Environmental Protection Agency (EPA).

Table of Contents

I. EPA's Final Action

What Action is EPA Taking in this Direct Final Rule?

We are approving the Governor's submittal of February 1, 1995, that establishes new requirements for road salting and sanding in section 9.A.6.7 (referred to by the State as section IX.A.6.g) of the SIP and in UACR R307–1–3. Concurrently, the State's ''Incorporation by Reference'' was changed in UACR R307–2–1. This same submittal also deletes obsolete rules for nonferrous smelter orders in UACR R307–1–3, and makes nonsubstantive changes to R307–1–1 and R307–1–3.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 4, 2000 without further notice unless the Agency receives adverse comments by January 5, 2000. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Summary of SIP Revision

A. What Revisions Were Made to the SIP?

This revision made changes to the road salting and sanding requirements in section 9.A.6.7 (referred to by the State as section IX.A.6.g) of the SIP and in UACR R307–1–3. This regulatory revision achieves the 20% emission reduction relied upon in the SIP's attainment demonstration. The State revised the SIP and UACR R307–1–3.2.7 to establish the use of salt that is at least 92% sodium chloride as Reasonably Available Control Technology (RACT) for road anti-skid treatment. Entities applying a material other than this are required to either demonstrate that the material generates no more emissions than salt which is at least 92% sodium chloride, or to sweep the affected roadways using vacuum street sweeper technology within three days of the end of the storm for which the material was applied. Recordkeeping requirements were also imposed. Concurrent with this action, the State's incorporation by reference under R307–2–1 was updated to change the recently amended date of the SIP from December 18, 1992 to December 9, 1993.

In addition to the changes to road salting and sanding, UACR R307–1–3.10, ''Non-Ferrous Smelter Orders,'' was deleted due to its being obsolete because the nonferrous smelter orders expired on January 1, 1988.

After the revised rules were adopted, the State identified a number of typographical errors in the printed version of the road salting and sanding rules in ''Control of Installations.'' This

was corrected through a nonsubstantive change revision (DAR filing #15820) in R307–1–3.2.7. The State also made a definition change to the definition for PM_{10} precursor at this time. This was corrected through a nonsubstantive change revision (DAR filing #15819) in UACR R307–1–1. The revisions were included in the submittal to EPA on February 1, 1995 as well.

B. Did Utah Follow the Proper Procedures for Adopting These Revisions?

The Clean Air Act (Act) requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the Act provides that each SIP revision be adopted after going through a reasonable notice and public hearing process prior to being submitted by a State.

Copies of the proposed changes were made available to the public and the State held public hearings for the changes to R307–2–1 ''Incorporation by Reference'' and SIP section 9.A.6.7, ''Road Salting and Sanding'' (DAR filing #14834) as well as for the changes to R307–1–3 ''Control of Installations'' for the road salting and sanding changes and the deletion of ''Non-Ferrous Smelter Orders'' (DAR filing #14833) on October 5, 1993, October 6, 1993, October 7, 1993 and October 13, 1993. The State made changes in response to public comments and the rule revisions to R307–2–1 and SIP section 9.A.6.7 were adopted by the Air Quality Board on January 3, 1994 and became effective on January 31, 1994; the revisions to R307–1–3 were adopted by the Air Quality Board on November 5, 1993 and became effective on January 3, 1994. The nonsubstantive changes which were made to R307–1–1, ''Foreword and Definitions'' and R307–1–3 ''Control of Installations'' (DAR filing #15819 and #15820) were effective on June 1, 1994. These revisions were formally submitted by the Governor on February 1, 1995. This submission was found to be administratively and technically complete in a letter to the Governor dated July 27, 1995.

III. Background

What Problems Does Today's Rule Address?

On February 1, 1995, the Governor submitted revisions to the road salting and sanding provisions in the SIP and the State rules, along with a deletion of the Non-Ferrous Smelter Orders, and an updated incorporation by reference and other nonsubstantive changes. This submission was found to be administratively and technically complete in a letter to the Governor dated July 27, 1995.

Road salt and sand are minor emission sources in Salt Lake and Utah Counties, with design day impacts ranging from 0% to 3.2% for salt and 0% to 7.5% for sand and other road dust. The original SIP (approved in 1994) required all agencies applying salt, sand or other anti-skid materials to roadways in the nonattainment areas to submit a plan to the State documenting the methods and schedule that would be used to achieve a 25% reduction in roadway surface loading of these materials, which was in turn anticipated to provide a 20% reduction in ambient contributions from this source category.

In addition, the State committed to complete a study to gather more information on this source category in order to confirm the expected 20% reduction. This study was completed in 1992. It demonstrated that road salting was not a contributor to PM_{10} in the nonattainment areas. The roadways sampled during the study were found to be cleaner after storm events than prior to the events, leading the State to the conclusion that road salting did not contribute PM_{10} emissions to the nonattainment area. As a result of this finding, the State revised the SIP and R307–1–3.2.7 to establish evaporative salt (the type used during the study) as Reasonably Available Control Technology for road anti-skid treatment. Entities applying a material other than at least 92% sodium chloride salt are required to either demonstrate that the material generates no more emissions than this salt, or to sweep the affected roadways using vacuum street sweeper technology within three days of the end of the storm for which the material was applied. Recordkeeping requirements were also imposed.

This regulatory revision achieves the 20% emission reduction relied upon in the SIP's attainment demonstration. As noted above, salt that is at least 92% sodium chloride (used by the majority of road maintenance agencies in the nonattainment areas) was found to have no impact on PM_{10} concentrations. Vacuum sweeper technology has been found through a number of EPA and non-EPA studies to reduce PM_{10} emissions from roadways by approximately 34%, exceeding the 20% emission reduction target in the SIP.

In addition to the changes to road sanding and salting, UACR R307–1–3.10, ''Non-Ferrous Smelter Orders,'' allowing nonferrous smelters to postpone compliance, was deleted due to this provision being obsolete. Pursuant to CAA section 119, nonferrous smelters could postpone their compliance with the statutes, but compliance could not be postponed beyond January 1, 1988.

After the revised rules were adopted, the State identified a number of typographical errors in the printed version of the rules. The State also made a minor change to the definition for PM_{10} precursor at this time. These were corrected through nonsubstantive change revisions (DAR filing #15820 and #15819). This revision was submitted to EPA on February 1, 1995 as well.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will 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), because it merely approves 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 9, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR part 52, subpart TT of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(43) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(43) On February 1, 1995 the Governor of Utah submitted revisions to the Utah SIP to revise the provisions for road salting and sanding in Section 9, part A of the SIP and in UACR R307–1–3, updating the incorporation by reference in R307–2–1, deleting obsolete measures for nonferrous smelters in R307–1–3, and making nonsubstantive changes to UACR R307–1–1 and R307–1–3.

(i) Incorporation by reference.

(A) UACR R307–1–3, a portion of ''Control of Installations,'' revisions to road salting and sanding requirements and deletion of non ferrous smelter orders, as adopted by Utah Air Quality Board on November 5, 1993, effective on January 3, 1994.

(B) UACR R307–2–1, ''Incorporation by Reference,'' revised date for incorporation by reference of the State Implementation Plan, as adopted by Utah Air Quality Board on January 31, 1994.

(C) UACR R307–1–1, ''Foreword and Definitions,'' nonsubstantive change made to definition of ''PM_{10} precursor,'' effective on June 1, 1994.

(D) UACR R307–1–3, ''Control of Installations,'' nonsubstantive changes to road salting and sanding, effective on June 1, 1994.

(ii) Additional Material.

(A) February 22, 1999 letter from Ursula Trueman, Director, Utah Division of Air Quality, to Richard Long, Director, EPA Region VIII Air and Radiation Program, transmitting nonsubstantive change correction to R307–2–1, ''Incorporation by Reference,'' that was left out of the February 1, 1995 SIP submittal.

(B) March 16, 1999 letter from Larry Svoboda, Unit Leader, EPA Region VIII Air and Radiation Program, to Ursula Trueman, Director, Utah Division of Air Quality, explaining EPA's interpretation of nonsubstantive revision to definition of ''PM_{10} precursor.''

(C) April 28, 1999 letter from Richard Sprott, Planning Branch Manager, Utah Division of Air Quality, to Larry Svoboda, Unit Leader, EPA Region VIII Air and Radiation Program, providing explanation for and background to the ''PM_{10} precursor'' definition.

(D) August 26, 1999 fax from Jan Miller, Utah Division of Air Quality, to Cindy Rosenberg, EPA Region VIII Air and Radiation Program, transmitting documentation for effective date of the ''PM_{10} precursor'' definition.

[FR Doc. 99–31533 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NOS. MT–001–0012a; MT–001–0013a; MT–001–0014a; MT–001–0015a; FRL–6482–76]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Emergency Episode Plan, Columbia Falls, Butte and Missoula Particulate Matter State Implementation Plans, Missoula Carbon Monoxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana. The revisions update the State of Montana's Emergency Episode Plan; Columbia Falls, Butte and Missoula's Particulate Matter (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10)) Plans; and the Missoula carbon monoxide (CO) Plan. The intended effect of this action is to make the federally approved SIP consistent with the State adopted SIP with respect to the Emergency Episode Plan, Columbia Falls, Butte and Missoula's PM–10 SIPS and Missoula's CO SIP. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act). EPA is also updating out-of-date sections in 40 CFR part 52, subpart BB—Montana.

DATES: This rule is effective on February 4, 2000 without further notice, unless EPA receives adverse comment by January 5, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region VIII, (303) 312–6437.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA. On July 8, 1997, the Governor of Montana submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of minor modifications to the Butte, Columbia Falls and Missoula PM–10 control plans, the Missoula CO control plan, and an update to the Montana Emergency Episode Plan.

I. Summary of SIP Revision

A. Columbia Falls PM–10 Control Plan

The July 8, 1997 SIP submittal revised the State's SIP narrative page numbering for the Columbia Falls PM–10 control plan and Table 15.11.14A, Columbia Falls 24-hour Demonstration of Compliance Implementation of Contingency Measure, and Table 15.11.15B, Columbia Falls 24-hour Demonstration of Compliance. The Tables are contained in the SIP narrative.

The revisions to the above tables make minor modifications to the attainment, maintenance and contingency measures demonstrations. In a recent review of the Columbia Falls attainment demonstration the State believed that the 24-hour attainment

demonstration contained in the SIP revisions EPA approved in 1994 and 1996 [1] had incorrectly labeled the source categories. The revised tables correct this error. With these minor revisions, Columbia Falls still demonstrates attainment of the PM–10 NAAQS.

We believe the revisions to the Columbia Falls PM–10 SIP are minor. We are approving the revisions to the Columbia Falls PM–10 SIP.

B. Butte PM–10 Control Plan

The July 8, 1997 SIP submittal revises the State's PM–10 attainment demonstration for Butte. Specifically, the SIP revision modifies the following tables contained in the SIP narrative: Table 47.10.14.3C, Contingency Measure Demonstration—24-Hour; Table 47.10.15A, Control Strategy Credit; Table 47.10.15.2A, Butte 24-Hour Demonstration of Compliance and the SIP narrative in sections 47.10.10.3, Rhone-Poulenc Basic Chemicals, Co. (Rhone-Poulenc) Control Efficiency, and 47.10.15.2, 24-Hour Demonstration of Attainment and Maintenance.

Rhone-Poulenc, a contributor of PM–10 to the Butte area, requested an increase in its permitted PM–10 emissions limit. In our review comments on the draft permit we indicated that the State would need to revise the Butte PM–10 SIP and submit documentation to support the Department's conclusion that although there was an increase in allowable emissions there would be no change in the PM–10 attainment and maintenance demonstrations for Butte.

In the earlier Butte PM–10 SIP revisions we approved in 1994 and 1995,[2] the allowable PM–10 emissions for Rhone-Poulenc was determined by multiplying the 1987–88 base year actual emissions by 1.2 (the allowable PM–10 emissions were 20% higher than the actual PM–10 emissions). Rhone-Poulenc's actual emissions were determined to be 117.7 tons of PM–10/year and the allowable PM–10 emissions were limited to 141.2 tons of PM–10/year.

On August 22, 1996, the Montana Department of Environmental Quality issued Air Quality Permit #1636–06 to Rhone-Poulenc. This permit increases the PM–10 emission limitations on the #1 and #2 coke dryers and the silo scrubbers, as well as the total PM–10 emission limitation for the facility. The permit indicates:

> The department has determined that the limits for the scrubbers controlling the #1 and #2 coke dryers, which also control emissions from the nodule sizing, crushing and handling activities, were established incorrectly. The Butte SIP outlines a control strategy which sets the Rhone-Poulenc's allowable emissions at 120% of the actual levels during the SIP base year of 1987–1988. The previous calculation of the actual base year emissions for the scrubbers controlling the coke dryers/nodule crushing and the scrubber controlling the silos was based on a source test performed by Rhone-Poulenc personnel in 1979. The department has determined that the use of data from these stack tests for establishing base-year emissions was not appropriate * * *. Because the calculations of base year emissions used inappropriate data, the limits established for the #1 and #2 coke dryer scrubbers and the silo scrubber were set at abnormally low levels. Rhone-Poulenc has demonstrated that these three emission limits are not achievable even after completely rebuilding the scrubber internals.
>
> This permit alteration will set limits for these sources based on source testing performed in 1992. The department feels that, because of more stringent QA/QC procedures and documentation of production levels as well as inlet particulate loadings to the control device, the testing performed in 1992 is a better source of data to use in estimating the base year actual emissions * * *

The new permit's PM–10 emission limitation for Rhone-Poulenc is 242 tons/year. The base year actual PM–10 emissions are assumed to be 201.7 tons/year (242/1.2=201.7).

With the July 8, 1997 SIP revision, the State has shown that Rhone-Poulenc's PM–10 contribution to the attainment and maintenance demonstration and contingency measure control does not change from the SIP revisions EPA approved in 1994 and 1995 and that the area still demonstrates attainment and maintenance of the PM–10 NAAQS. Therefore, EPA is approving the 1997 revision to the Butte PM–10 SIP.

C. Missoula PM–10 and CO Control Plans

The July 8, 1997 SIP submittal revises the State's Table of Contents for the Missoula PM–10 Control Plan and updates the CO Control Plan.

With the July 8, 1997 submittal, the State is updating the Missoula PM–10 SIP Table of Contents by removing a reference to section ''32.10.15 Maintenance Plan'' and in its place putting a new section, ''32.10.15 PM–10 Commitments.'' Previously the Table of Contents indicated that the Maintenance Plan was in section 32.10.15 and the PM–10 Commitments were in section 32.10.16. The July 8, 1997 submittal does not appear to be making any revisions to the Missoula PM–10 SIP narrative that we already approved.

In reviewing previously submitted and federally approved Missoula PM–10 SIP revisions [3], we found that although the previous Table of Contents referenced section ''32.10.15 Maintenance Plan,'' we could not find that a corresponding section in the SIP narrative was ever submitted or federally approved. In discussions with staff at the DEQ, however, we learned that their Missoula PM–10 SIP documents do contain a section 32.10.15 Maintenance Plan which is basically a ''place holder'' for a future PM–10 maintenance plan required for redesignating the area to attainment.

With respect to the PM–10 Commitments, our records show that on November 30, 1992, the Governor of Montana submitted PM–10 Commitments to be included as part of the Missoula PM–10 SIP. The commitments were in the form of a letter. (It does not appear, however, that the final SIP narrative was ever submitted which incorporated the PM–10 Commitments.) EPA addressed the PM–10 commitments in its January 18, 1994 action. The State has since fulfilled these commitments. See EPA's December 13, 1994 and August 30, 1995 actions mentioned in footnote 3.

Since the July 8, 1997 submittal makes the Table of Contents consistent to what we believe is contained in the federally approved SIP, we are approving the revision to the Table of Contents.

The CO Control Plan revision consists of an update to the existing SIP narrative, adopted by the State in 1981 and approved by us on January 16, 1986 (51 FR 2397). With the 1997 revision, the State is updating the SIP narrative to reflect changes in emissions and monitored air quality values, and the addition of new control strategies since the original SIP was adopted. The SIP revision does not include a new attainment demonstration (none is required for the area under the 1990 Clean Air Act Amendments), nor does it include any new control strategies that we have not already approved.

The original CO SIP relied upon the Federal Motor Vehicle Control Program (FMVCP) and reconstruction of the

[1] We initially approved the Columbia Falls PM–10 control plan on April 14, 1994 (59 FR 17700) and the Columbia Falls PM–10 contingency measures and minor revisions to the attainment and maintenance demonstrations on March 19, 1996 (61 FR 11153).

[2] We initially approved the Butte PM–10 SIP on March 11, 1994 (59 FR 11550). On March 22, 1995 (60 FR 15056) we approved the PM–10 contingency measures for Butte and revisions to the attainment and maintenance demonstration due to the inclusion of a new emissions limit in a revised air quality permit for Montana Resources, Inc.

[3] We originally approved the Missoula PM–10 SIP on January 18, 1994 (59 FR 2537) with revisions approved on December 13, 1994 and August 30, 1995 (59 FR 64133 and 60 FR 45051, respectively).

Brooks/South/Russell intersection to bring the Missoula area into compliance with the CO NAAQS. The FMVCP is our ongoing nationally-implemented program to control motor vehicle emissions; the Brooks/South/Russell intersection reconstruction was completed in 1985. The revised SIP narrative discusses additional measures that have been implemented to control CO emissions in Missoula, including the woodburning control program (Rule 1428, Solid Fuel Burning Devices, approved by us on January 18, 1994 (59 FR 2537) with revisions approved on December 13, 1994 and August 30, 1995 (59 FR 64133 and 60 FR 45051, respectively)), the Reserve Street project to provide an alternative route to Brooks Avenue (not included in the SIP), and the oxygenated fuels program (approved by us on November 8, 1994 (59 FR 55585)).

The State submitted this update to the Missoula CO SIP narrative with the intention that it supersede the 1981 SIP narrative and incorporate the already-existing CO control strategies for Missoula into one document. The requirements of the 1990 Clean Air Act Amendments for CO that apply to Missoula have already been satisfied by the State in other submittals, and this document does not revise any of those SIP elements. We are approving this revision to the Missoula CO SIP.

D. Emergency Episode Plan

The July 8, 1997 SIP submittal revises the State's Emergency Episode Plan. The submittal, for the most part, revises the priority classification of several of the Air Quality Control Regions (AQCR) based on more current ambient data. The submittal also revises the discussion of the episode surveillance system and data acquisition for Priority I and II Regions. Specifically, the prior Emergency Episode Plan identified the specific ambient monitors to be used to identify emergency episodes and the frequency at which these monitors should be operated during different types of emergency episodes. The recently submitted Emergency Episode Plan indicates that the episode surveillance system will consist of all the air monitoring equipment determined annually in the network review. Additionally the Emergency Episode Plan indicates that during an emergency episode, PM–10, sulfur dioxide and CO concentrations will be determined by continuous monitors.

We last approved revisions to the State's Emergency Episode Plan on January 20, 1994 (59 FR 2988). In reviewing the current revisions to the Emergency Episode Plan we had several concerns. On September 7, 1999, we sent a letter to Mark Simonich, Director, Department of Environmental Quality (DEQ), identifying the following concerns and requesting that the State address these concerns in its next revision to the Plan:

- We believe that AQCR 140 (Billings) should be a Priority II area for sulfur dioxide. Ambient data from 1993, 1994, 1995 and 1996 place the Billings/Laurel area in Priority II.
- We believe that AQCR 142 (Helena) should be a Priority II area for particulate matter due to PM–10 concentrations measured in 1998.
- Based on State's draft revisions to its Open Burning rules it appears that the National Weather Service (NWS) no longer provides certain weather forecasting information (*e.g.,* ventilation). If the NWS no longer provides the information mentioned in the Emergency Episode Plan then the plan should be revised to indicate who is providing this information.
- In a letter dated December 4, 1996, we suggested that the Department change the sulfur dioxide significant harm level from 2620 μg/m3 to 2.620 μg/m3 as this was the value shown in 40 CFR 51.151. The State made the requested change with the July 1997 submittal of the Emergency Episode Plan. We now believe the CFR is incorrect and the value should remain 2620 μg/m3.

On October 22, 1999, Mark Simonich, Director, Department of Environmental Quality agreed to address our concerns with the next revision to the Emergency Episode Plan. Mr. Simonich indicated that priority classifications will be updated based upon the most recent three years of monitoring data (1997–1999). Based on the State's agreement to revise the Plan, we are approving the 1997 submittal of the State's Emergency Episode Plan. In this notice we are updating 40 CFR 52.1371 to indicate the current emergency episode priority classifications for the AQCRs.

E. Updates to 40 CFR Part 52, Subpart BB—Montana

At this time we are also updating 40 CFR part 52, subpart BB—Montana. We recently reviewed this subpart and found some of the sections to be out of date or found errors made when regulatory text was added to this subpart. The items below identify the changes we are making.

1. On November 3, 1995 (60 FR 55792) we approved revisions to Montana's prevention of significant deterioration (PSD) regulations. We inadvertently codified these revision into 40 CFR 52.1320(c)(42) in lieu of 40 CFR 52.1370(c)(42). We are removing these revisions from 40 CFR 52.1320(c)(42) and adding them to 40 CFR 52.1370(c)(42).

2. Prior Clean Air Act (Act) requirements were superceded following the 1990 amendments to the Act. Pursuant to the 1990 amended Act, on March 30, 1994 the Governor of Montana submitted a primary sulfur dioxide (SO2) SIP for the East Helena area. We approved the primary SO2 SIP on January 27, 1995 (60 FR 5313). See also 40 CFR 52.1370(c)(37). Since EPA has approved the primary SO2 SIP for the East Helena area, 40 CFR 52.1373 Control Strategy: Sulfur oxides is no longer applicable. Since 40 CFR 52.1373 is no longer applicable we are replacing 40 CFR 52.1373 with another entry. The 1990 amended Act also modified the attainment dates for the SO2 NAAQS.[4] As a result, 40 CFR 52.1375 is not no longer applicable. We are removing 40 CFR 52.1375 from 40 CFR part 52, subpart BB—Montana.

3. On December 21, 1992 (57 FR 60485) we disapproved portions of the State's open burning regulations. Later the State submitted revisions to the open burning regulations which we approved on October 23, 1996 (61 FR 54946). At that time we should have removed 40 CFR 52.1384(b). Since 40 CFR 52.1384(b) is no longer applicable we are removing it from 40 CFR part 52, subpart BB—Montana.

4. On March 4, 1980 (45 FR 14036) and September 23, 1980 (45 FR 62982) we conditionally approved the State's source surveillance requirements. The State later submitted revisions which we approved on January 16, 1986 (51 FR 2397). At that time we should have removed 40 CFR 52.1385. Since 40 CFR 52.1385 is no longer applicable we are removing it from 40 CFR part 52, subpart BB—Montana.

II. Final Action

We are approving the minor revisions to the Columbia Falls, Butte and Missoula PM–10 SIPS, Missoula CO SIP and the Montana Emergency Episode Plan submitted on July 8, 1997. We are also updating 40 CFR part 52, subpart BB as identified above. A separate Technical Support Document (TSD) has not been prepared for this notice.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing

[4] See our General Preamble published on April 16, 1992 at 57 FR 13546.

a separate document that will serve as the proposal to approve the SIP revision if adverse comments be filed. This rule will be effective February 4, 2000 without further notice unless the Agency receives adverse comments by January 5, 2000. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will 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), because it merely approves 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 22, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52, subparts AA and BB of chapter I, title 40 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

§ 52.1320 [Removed and reserved]

2. Section 52.1320(c)(42) is removed and reserved.

Subpart BB—Montana

3. Section 52.1370 is amended by adding paragraph (c)(42) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(42) On May 22, 1995, the Governor of Montana submitted revisions to the prevention of significant deterioration regulations in the Administrative Rules of Montana to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

(i) Incorporation by reference

(A) Revisions to the Administrative Rules of Montana (ARM), rules 16.8.945(3)(c), 16.8.945(21)(d), 16.8.945(24)(d), 16.8.947(1), 16.8.953(7)(a), and 16.8.960(4), effective 10/28/94.

4. Section 52.1371 is revised to read as follows:

§ 52.1371 Classification of regions.

The Montana Emergency Episode Plan was revised with a July 8, 1997 submittal by the Governor. The July 8, 1997 Emergency Episode Plan classifies the Air Quality Control Regions (AQCR) as follows:

Air quality control regions (AQCR)	Pollutant				
	Particulate matter	Sulfur oxide	Nitrogen dioxide	Carbon monoxide	Ozone
Billings Intrastate AQCR 140	III	III	III	III	III
Great Falls Intrastate AQCR 141	III	III	III	III	III
Helena Intrastate AQCR 142	III	II	III	III	III
Miles City Intrastate AQCR 143	III	III	III	III	III
Missoula Intrastate AQCR 144	II	III	III	III	III

5. Section 52.1373 is revised to read as follows:

§ 52.1373 Control strategy: Carbon monoxide.

On July 8, 1997, the Governor of Montana submitted revisions to the SIP narrative for the Missoula carbon monoxide control plan.

6. Section 52.1374 is added to read as follows:

§ 52.1374 Control strategy: Particulate matter.

On July 8, 1997, the Governor of Montana submitted minor revisions to the Columbia Falls, Butte and Missoula PM–10 SIPS.

§ 52.1375 [Removed and reserved]

7. Section 52.1375 is removed and reserved.

§ 52.1384 [Removed and reserved]

8. Section 52.1384(b) is removed and reserved.

§ 52.1385 [Removed and reserved]

9. Section 52.1385 is removed and reserved.

[FR Doc. 99–31536 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6503–7]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: December 6, 1999.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Kelly Davis at (202) 564–2303 or fax (202) 565–2096, *davis.kelly@epa.gov,* U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW, Washington, DC, 20001. The Stratospheric Protection Hotline at (800) 296–1996. EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/''.

SUPPLEMENTARY INFORMATION:

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

• *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the original rule for the SNAP program (59 FR 13044; March 18, 1994), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this notice EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that Notice-and-Comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register.**

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published Notices listing acceptable alternatives on August 26, 1994 (59 FR 44240), January 13, 1995 (60 FR 3318), July 28, 1995 (60 FR 38729), February 8, 1996 (61 FR 4736), September 5, 1996 (61 FR 47012), March 10, 1997 (62 FR 10700), June 3, 1997 (62 FR 30275), February 24, 1998 (63 FR 9151), May 22, 1998 (63 FR 28251), and June 8, 1999 (64 FR 30410), and published Final Rulemakings restricting or prohibiting the use of certain substitutes on March 18, 1994 (59 FR 13044), June 13, 1995 (60 FR 31092), May 22, 1996 (61 FR 25585), October 16, 1996 (61 FR 54029), January 26, 1999 (64 FR 3861 and 3865), March 3, 1999 (64 FR 10374), April 28, 1999 (64 FR 22981), and June 8,1999 (64 FR 30410).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I and class II substances in the refrigeration and air

conditioning, foam blowing, solvents cleaning, and aerosols sectors. For copies of the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

Parts A–D below present a detailed discussion of the substitute listing. The table summarizing today's listing decisions is in Appendix A. The comments contained in Appendix A provide additional information, but are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments is not mandatory for use of a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA strongly encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply refer to standardized operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Acceptable Substitutes

Under section 612 of the Clean Air Act, EPA is authorized to review substitutes for class I (CFC) and class II (HCFC) chemicals. The decisions set forth in this section expand the acceptable listing for refrigerants.

In listing these refrigerants as acceptable, EPA anticipates that these refrigerants will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. EPA also anticipates that manufacturers, installers, servicers, building owners and other parties responsible for construction and maintenance of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards established by voluntary consensus standards organizations such as the American National Standards Institute (ANSI). The Agency also expects that refrigerating systems will conform to all relevant provisions of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards, including Standard 15, Safety Code for Mechanical Refrigeration, which provides guidelines for the safety of persons and property on or near premises where refrigeration facilities are located. Finally, the Agency anticipates that any exposures by installers or servicers to refrigerants will conform to all applicable standards set by the U.S. Occupational Safety and Health Administration (OSHA) and will not exceed any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limits (WEELs).

(a) THR–02. *The chemical blend submitted to EPA with the unregistered trade name THR–02 is acceptable as a substitute for CFC–12 in the following end-uses:*

- Industrial process refrigeration and air-conditioning.
- Cold storage warehouses.
- Refrigerated transport.
- retail food refrigeration.
- Ice machines.
- Vending machines.
- Water coolers.
- Centrifugal chillers.
- Reciprocating chillers.
- Household refrigerators and freezers.

Tsinghua University of Beijing and the Beijing Inoue Qinghua Refrigeration Technology Company LTD, the joint submitters of THR–02, claim that its composition is confidential business information. Fractionation and flammability testing have determined that although two constituents of the blend are flammable, THR–02 as blended is not, and further testing has shown that it does not become flammable after leakage. The blend does not contain any significant ozone depleters. THR–02 contains a constituent with a low global warming potential (GWP). The potential of this constituent for contributing to global warming will be mitigated in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act.

(b) THR–03. *The chemical blend submitted to EPA with the unregistered trade name THR–03 is acceptable as a substitute for HCFC–22 in the following end-uses:*

- Industrial process refrigeration and air-conditioning.
- Cold storage warehouses.
- Refrigerated transport.
- Retail food refrigeration.
- Ice machines.
- Centrifugal chillers.
- Reciprocating chillers.
- Ice skating rinks.
- Household refrigerators and freezers.
- Residential window unit air-conditioning.

Tsinghua University of Beijing and the Beijing Inoue Qinghua Refrigeration Technology Company LTD, the joint submitters of THR–03, claim that its composition is confidential business information. Fractionation and flammability testing have determined that although one constituent of the blend is flammable, THR–03 as blended is not, and further testing has shown that it does not become flammable after leakage. The blend has virtually no ozone depleting potential. THR–03 contains two constituents with moderate global warming potentials (GWP). The potential of these constituents for contributing to global warming will be mitigated in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act.

(c) ISCEON 59. *The chemical blend submitted to EPA with the unregistered trade name ISCEON 59 is acceptable as a substitute for R–22 in the following end-uses:*

- Household and light commercial air-conditioning.
- Commercial comfort air-conditioning.
- Industrial process refrigeration and air-conditioning.
- Cold storage warehouses.
- Refrigerated transport.
- Retail food refrigeration.
- Ice machines.
- Vending machines.
- Water coolers.
- Centrifugal chillers.
- Reciprocating chillers.
- Household and other refrigerated appliances.
- Ice skating rinks.
- Non-mechanical heat transfer.

ISCEON 59 contains HFC–125, HFC–134a, and a small amount of n-butane. HFC–125 and HFC–134a exhibit a fairly high global warming potential (3,400 and 1,900, respectively, over a 100 year integrated time horizon) compared to HCFC–22 (1,750 over a 100 year integrated time horizon). However, the potential of these constituents for contributing to global warming will be mitigated in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act. ISCEON 59 does not contain ozone-depleting substances and is low in toxicity. Although n-butane is flammable, the blend is not. Leak testing has demonstrated that its composition should never become flammable under the expected conditions in the listed end-uses.

(d) Ikon® B. *Ikon® B, a blend of trifluoroiodomethane (CF_3I)*, HFC–134a

and HFC–152a, is acceptable as a substitute for CFC–12 in the following end-uses:

- Industrial process refrigeration and air-conditioning.
- Cold storage warehouses.
- Refrigerated transport.
- Retail food refrigeration.
- Ice machines.
- Vending machines.
- Water coolers.
- Centrifugal chillers.
- Reciprocating chillers.
- Residential dehumidifiers.

Fractionation and flammability testing have determined that although HFC–152a is flammable, Ikon® B as blended is not, and further testing has shown that it does not become flammable after leakage. Ikon® B has virtually no ozone depleting potential. It contains two constituents with moderate global warming potentials (GWP). The potential of these constituents for contributing to global warming will be mitigated in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act.

(e) Cryo-Mechanical® Cryogenic Transport Refrigeration System. *The cryo-mechanical® cryogenic transport system that uses recaptured and recycled liquid carbon dioxide or liquid nitrogen is acceptable as a substitute for R–502 or CFC–12 in the transport refrigeration end-use.* The cryo-mechanical® cryogenic transport system replaces the conventional engine and compressor in a transport refrigeration system by using the energy from evaporating and expanding liquid CO_2 or N_2. The CO_2 or N_2 expands through the system coils and powers a vapor motor, which then powers an evaporator blower and an alternator. The evaporator blower forces cargo space air through the system coils where it is cooled down and subsequently propelled back into the cargo space. The CO_2/N_2 vapors are released into the atmosphere without ever entering the cargo space. Since the system does not require the use of the conventional diesel engine, emissions of combustion products such as NO_X, SO_2, and CO_2 are avoided.

(f) HFE–7200. *Hydrofluroether (HFE–7200) ($C_4F_9OC_2H_5$;* ethoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 in non-mechanical heat transfer. HFE–7200 does not delete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 100 over a 100-year time horizon. The GWP and lifetime for this HFE are lower than the GWP and lifetime for CFC–113.

B. Foam Blowing

1. Acceptable Substitutes

(a) HFC–245fa. *HFC–245fa is acceptable as a substitute for CFC–11 and HCFC–141b in all foam end-uses.* HFC–245fa contains no chlorine or bromine; therefore, it has zero ODP. Its 100-year GWP is 1022. HFC–245fa is non-flammable. EPA anticipates that HFC–245fa will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. The Agency also expects that any exposures will not exceed any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limits (WEELs).

(b) Exxsol Blowing Agents. *Exxsol Blowing Agents are acceptable substitutes for HCFC–141b in all foam end-uses.* C3–C6 saturated light hydrocarbons are already acceptable substitutes for CFC–11 and HCFC–141b in several foam end-uses. Exxsol blowing agents are hydrocarbon (pentane) blends that have no ozone depletion potential, low global warming potentials, and are low in toxicity. However, these agents are flammable and should be handled with proper precautions.

The flammability of hydrocarbon blowing agents, including Exxsol, are of particular concern in spray foam applications where a controlled factory environment is not possible. The manufacturer and supplier of Exxsol blowing agents, Exxon, has performed several studies showing that under normal circumstances flammable concentrations do not occur in spray foam applications (Docket A–91–42, Category IX–B, Background Documents for Notice 11). However, without adequate ventilation, several situations could lead to explosion or fire. Examples include, but are not limited to, equipment wells on roofs, roofs enclosed by high parapet walls, and interior applications (especially where a basement or other confined space is beneath the spray area). Therefore, it is critical that application in enclosed areas be accompanied by adequate forced ventilation, flammable vapor monitoring and the elimination of all possible ignition sources.

The potential for explosion or fire highlights the need for safety training. Exxon will sell Exxsol blowing agents only to systems manufacturers who have contractually guaranteed to provide training on safe storage, handling and application to their customers, contractors, and applicators. Draft training materials have been provided to EPA and are available through the Air Docket (Docket A–91–42, Category IX–B, Background Documents for Notice 11). Exxon has also offered to work with trade groups to develop additional training. While training can not provide an absolute guarantee of safety, EPA believes that a comprehensive training program, if implemented properly, can adequately control risks associated with use of potentially flammable pentane-blown spray foam systems.

Because manufacturers of other hydrocarbon blowing agents have not ensured adequate training, today's listing does not extend to hydrocarbons as a class. If other manufacturers are interested in Exxon's approach, they should contact EPA.

C. Solvents Cleaning

1. Acceptable Substitutes

(a) HFE–7200. *Hydrofluoroether (HFE–7200): ($C_4F_9OC_2H_5$;* ethoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 and methyl chloroform (MCF) in all solvents cleaning end-uses. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 100 over a 100-year time horizon. EPA anticipates that HFE–7200 will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. The Agency also expects that any exposures will not exceed any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limits (WEELs).

D. Aerosols

1. Acceptable Substitutes

(a) HFE–7200. *Hydrofluoroether (HFE–7200): ($C_4F_9OC_2H_5$;* ethoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 and methyl chloroform (MCF) as a solvent in aerosol products. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 0.9 year atmospheric lifetime and a GWP of 100 over a 100-year time horizon. EPA

anticipates that HFE–7200 will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. The Agency also expects that any exposures will not exceed any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limits (WEELs).

III. Additional Information

Contact the Stratospheric Protection Hotline at (800) 296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST). For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as all EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/'' and from the Stratospheric Protection Hotline whose number is listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: November 24, 1999

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS

End-use	Substitute	Decision	Comments
REFRIGERATION and AIR CONDITIONING SECTOR			
The following CFC–12 end-uses: • Industrial process refrigeration and air-conditioning • Cold storage warehouses • Refrigerated transport • Retail food refrigeration • Ice machines • Vending machines • Water coolers • Centrifugal chillers • Reciprocating chillers • Household refrigerators and freezers	THR–02	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
The following HCFC–22 end-uses: • Industrial process refrigeration and air-conditioning • Cold storage warehouses • Rrefrigerated transport • Retail food refrigeration • Ice machines • Centrifugal chillers • Reciprocating chillers • Ice skating rinks • Household refrigerators and freezers • Window-unit residential air conditioners	THR–03	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
The following HCFC–22 end-uses: • Household and light commercial air-conditioning • Commercial comfort air-conditioning • Industrial process refrigeration and air-conditioning • Cold storage warehouses • Refrigerated transport • Retail food refrigeration • Ice machines • Vending machines • Water coolers • Centrifugal chillers • Reciprocating chillers • Household and other refrigerated appliances • Ice skating rinks • Non-mechanical heat transfer	ISCEON 59	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.

End-use	Substitute	Decision	Comments
The following CFC–12 end-uses: • Industrial process refrigeration and air-conditioning • Cold storage warehouses • Refrigerated transport • Retail food refrigeration • Ice machines • Vending machines • Water coolers • Centrifugal chillers • Reciprocating chillers • Residential dehumidifiers	Ikon® B	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
The following R–502 or CFC–12 end-uses: • Refrigerated transport	Cryo-Mechanical® Cryogenic Transport Refrigeration System.	Acceptable	The Cryogenic transport system may use liquified nitrogen (N_2) or carbon dioxide (CO_2). EPA expects that suppliers of CO_2 will not generate new CO_2 for this system, but instead, use the CO_2 that is commonly recovered, purified, and liquified from that otherwise released from existing industrial processes.
The following CFC–113 end-uses: • Non-mechanical heat transfer	HFE–7200	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards.
FOAM BLOWING SECTOR			
The following CFC–11 and HCFC–141b end-uses: • All foam end-uses	HFC–245fa	Acceptable	EPA's Office of Pollution Prevention and Toxics has reviewed the toxicity profile for HFC-245fa, and referred it to a WEEL committee for a final exposure limit.
The following HCFC–141b end-uses: • All foam end-uses	Exxsol Blowing Agents.	Acceptable	EPA expects that Exxon will work with its customers to ensure that they are aware of potential risks associated with Exxsol and that systems manufacturers provide adequate training on safe storage, handling and application to customers, contractors, and applicators. EPA also expects that Exxon will work with trade groups and continue to develop training materials as more information becomes available on the risks of hydrocarbons in spray foam applications.
SOLVENTS CLEANING SECTOR			
The following CFC-113 and methyl chloroform end-uses: • All solvents cleaning end-uses	HFE–7200	Acceptable	The Agency expects that any exposures will not exceed any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limits (WEELs).
AEROSOL SECTOR			
The following CFC-113 and methyl chloroform end-uses: • As a solvent in aerosol products	HFE–7200	Acceptable	The Agency expects that any exposures will not exceed any acceptable exposure limits set by any voluntary consensus standards organization, including the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit values (TLVs) or the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limits (WEELs).

[FR Doc. 99–31544 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300940; FRL–6386–6]

RIN 2070–AB78

N-Acyl sarcosines and Sodium N-acyl sarcosinates; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of the inert ingredients *N*-acyl sarcosines and sodium *N*-acyl sarcosinates *N*-oleoyl sarcosine (CAS Reg. No. 110–25–8); *N*-stearoyl sarcosine (CAS Reg. No. 142–48–3); *N*-lauroyl sarcosine (CAS Reg. No. 97–78–9); *N*-myristoyl sarcosine (CAS Reg. No. 52558–73–3); *N*-cocoyl sarcosine mixture (CAS Reg. No. 68411–97–2); and sodium *N*-acyl sarcosinates *N*-methyl-*N*-(1-oxo-9-octodecenyl)glycine (CAS Reg. No. 3624–77–9); *N*-methyl-*N*-(1-oxooctadecyl) glycine (CAS Reg. No. 5136–55–0); *N*-methyl-*N*-(1-oxododecyl) glycine (CAS Reg. No. 137–16–6); *N*-methyl-*N*-(1-oxotetradecyl glycine (CAS Reg. No. 30364–51–3); and *N*-cocoyl sarcosine sodium salt mixture (CAS Reg. No. 61791–59–1) when used (as surfactant) in pesticide formulations containing glyphosate. EPA has established this regulation on its own initiative.

DATES: This regulation is effective December 6, 1999. Objections and requests for hearings, identified by docket control number OPP–300940, must be received by EPA on or before February 4, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300940 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8377; and e-mail address: acierto.amelia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300940. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

In the **Federal Register** of July 7, 1999 (64 FR 36640) (FRL–6088–4), EPA issued a proposal pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) to amend 40 CFR part 180 by establishing exemptions from the requirement of a tolerance for residues of *N*-acyl sarcosines and sodium *N*-acyl sarcosinates when used as inert ingredients (surfactants) in glyphosate formulations. The proposal noted that these chemicals were the subject of a proposed rule published prior to the enactment of the Food Quality Protection Act of 1996. Summaries of the initial proposed rule was also included. There were no comments received in response to the proposed rule.

Based on the reasons set forth in the preamble to the proposed rule, EPA is establishing an exemption from the requirement of a tolerance for *N*-acyl sarcosines and sodium *N*-acyl sarcosinates as set forth below.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409.

However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300940 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 4, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300940, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption from the requirement of a tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1207 is added to subpart D to read as follows:

§ 180.1207 N-acyl sarcosines and sodium N-acyl sarcosinates; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the following substances when used as inert ingredients (surfactants) at levels not to exceed 10% in pesticide formulations containing glyphosate:

Name	CAS Reg. No.
N-acyl sarcosines.	
N-cocoyl sarcosine mixture ...	68411-97-2
N-lauroyl sarcosine	97-78-9
N-myristoyl sarcosine	52558-73-3
N-oleoyl sarcosine	110-25-8
N-stearoyl sarcosine	142-48-3
Sodium N-acyl sarcosinates.	
N-cocoyl sarcosine sodium salt mixture	61791-59-1
N-methyl-N-(1-oxo-9-octodecenyl) glycine	3624-77-9
N-methyl-N-(1-oxododecyl) glycine	137-16-6
N-methyl-N-(1-oxooctadecyl) glycine	5136-55-0
N-methyl-N-(1-oxotetradecyl glycine	30364-51-3

[FR Doc. 99–31545 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300931; FRL–6384–1]

RIN 2070–AB78

Tetraconazole [(+/-)-2-(2,4-dichlorophenyl)-3-(1H-1,2,4-triazol-1-yl) propyl 1, 1,2,2-tetrafluoroethyl ether]; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of tetraconazole in or on sugar beets, and sugar beet-related commodities, and for secondary residues of triazole on animal commodities from livestock fed sugar beet by-products. This action is in response to EPA's granting of an emergency exemption under provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, authorizing use of the pesticide on sugar beets. This regulation establishes maximum permissible levels for residues of tetraconazole [(+/-)-2-(2,4-dichlorophenyl)-3-(1*H*-1,2,4-triazol-1-yl) propyl 1, 1,2,2-tetrafluoroethyl ether] in the effected food commodities. The tolerances will expire and will be revoked on December 31, 2001.

DATES: This regulation is effective December 6, 1999. Objections and requests for hearings, identified by docket control number OPP–300931, must be received by EPA on or before February 4, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300931 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–308–9358; and e-mail address: deegan.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental

Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–300931. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the fungicide tetraconazole, in or on sugar beet at 0.10 part per million (ppm), 6.0 ppm in sugar beet top, 0.20 ppm in sugar beet dried pulp, 0.30 ppm in sugar beet molasses, 0.050 ppm in milk, 0.030 ppm in cattle, meat and meat byproducts except kidney and liver, 0.20 ppm in kidney, 6.0 ppm in liver, and 0.60 ppm in fat. These tolerances will expire and are revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Tetraconazole on Sugar beets and FFDCA Tolerances

The Red River Valley, shared by North Dakota and Minnesota, is the leader in U.S. sugar beet production, representing approximately 45% of planted acreage and 50% of tonnage produced annually. *Cercospora* leafspot began to present a problem to sugarbeet growers in the early 1980's. Growers at that time preferred benzimidazole fungicides (benomyl and thiophanate methyl) which were registered. Within a few years, resistance was shown to have developed toward these compounds (also, since then sugar beets was dropped from the thiabendazole label). During approximately the following 17 years, growers have employed a variety of chemical classes in the control of *C. beticola*. Triphenyltin hydroxide (Fentin Hydroxide, TPTH) provided reliable control of *cercospora* between about 1983 and 1994. In 1994, resistance was documented and use very quickly dropped off as use was no longer recommended as a sound control practice. There continues to be some limited use of the benzimidazole fungicides, but they are no longer recommended for stand-alone use, nor for more than one application per year. There are currently ethylenebisdithiocarbamate (EBDC) fungicides registered for this use (Mancozeb, maneb) that do work effectively when applied at full label rates. However, label restrictions preclude mancozeb being used for season-long control, leaving significant acreage unprotected during the final month of growth. A final alternative, copper hydroxide, is less effective than mancozeb and is not preferred or recommended. The applicants stated that without approval of the use of tetraconazole to control *cercospora* on sugar beets, losses to growers could approach and exceed 17% of net revenue. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of tetraconazole on sugar beets for control of *Cercospora* leafspot in North Dakota and Minnesota.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tetraconazole in or on sugar beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and be revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sugar beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance-setting action at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether tetraconazole meets EPA's registration requirements for use on sugar beets, or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for

registration of tetraconazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than North Dakota and Minnesota to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tetraconazole, contact the Agency's Registration Division at the address provided under the ''ADDRESSES'' section.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tetraconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of tetraconazole on sugar beets at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tetraconazole are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity*. Acute Reference Dose (RfD) = 0.05 milligrams/kilogram/day (mg/kg/day). For acute dietary risk assessment, EPA used the no observed adverse effect level (NOAEL) of 5 mg/kg/day, based on decreased maternal body weight and food consumption at the lowest observed adverse effect level (LOAEL) of 22.5 mg/kg/day, from the developmental study in rats. Due to the severity of pup effects in rat reproduction study, an additional FQPA safety factor of three has been applied to the acute and chronic RfD calculations. The percent of acute and chronic RfD utilized should not exceed 33%. This risk assessment will evaluate acute dietary risk to all population subgroups.

2. *Short- and intermediate-term toxicity.* For short-term Margin of Exposure (MOE) calculations, EPA used the NOAEL of 5 mg/kg/day, based on decreased maternal body weight and food consumption at the LOAEL of 22.5 mg/kg/day, from the developmental study in rats.

For intermediate-term MOE calculations, EPA used the NOAEL of 0.8 mg/kg/day 10 ppm from the 90-day oral feeding study in rats. At the LOAEL of 4.1 mg/kg/day 60 ppm, there were increased liver weights and associated changes in liver pathology observed as minimal centrilobular hepatocyte enlargement.

3. *Chronic toxicity*. EPA has established the RfD for tetraconazole at 0.005 mg/kg/day. This RfD is based on a 2-year chronic toxicity/carcinogenicity study in rats with a NOAEL of 0.5 mg/kg/day 10 ppm and an uncertainty factor of 100 based on osseous hypertrophy of skull bones at the LOAEL of 3.9 mg/kg/day 80 ppm. Due to the severity of pup effects in the rat reproduction study, an additional FQPA safety factor of three has been applied to the acute and chronic RfD calculations. The percent of acute and chronic RfD utilized should not exceed 33%.

4. *Carcinogenicity*. Tetraconazole has not been classified with respect to carcinogenic potential by EPA. However, based on the tumorigenic results in the mouse carcinogenicity study, EPA has made an initial determination that a Q1* should be determined based on the male mouse benign liver tumors, excluding the highest dose. The Q1* is 0.037 $(mg/kg/day)^{-1}$.

C. Exposures and Risks

1. *From food and feed uses.* Because EPA has never registered any other uses of tetraconazole, there are no other tolerances for food or feed items that have been established prior to this action. The current action being taken to establish time-limited tolerances to support an authorized emergency exemption use of tetraconazole represent the total potential exposure to this chemical. Risk assessments were conducted by EPA to assess dietary exposures and risks from tetraconazole as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary (food only) risk assessment used the Anticipated Residue Contribution (ARC). The high-end exposure estimate (food only) of 0.002231 mg/kg/day, represents 13% of the Population Adjusted Dose (PAD) for children 1-6 years of age. This should be viewed as a partially refined risk estimate; refinement using anticipated residue values and percent crop-treated (PCT) data in conjunction with Monte Carlo analysis would result in a lower acute dietary exposure estimate.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA incorporated anticipated residue values.The emergency exemption tetraconazole time-limited tolerances result in an ARC that is equivalent to the following percentages of the RfD:

	Exposure mg/kg/day	% PAD
U.S. Population (48 Contiguous States) ..	0.000068	4.0%
Hispanics	0.000097	5.7%
Non-Hispanic Blacks	0.000082	4.8%
Children (1-6 years old)	0.000153	9.0%

The subgroups listed above are: (1) The U.S. population (48 contiguous states); (2) those for children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 contiguous states).

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *From drinking water.* Because tetraconazole is a new and unregistered chemical, EPA does not currently have adequate data with which to model

upper-level screening concentrations due to consumption of drinking water. Therefore, EPA is not able to determine if concentrations of residues of tetraconazole in drinking water would exceed the drinking water level of concern (DWLOC) estimates. However, because both the cancer risk and the non-cancer risk dietary estimates determined by EPA are sufficiently low that it is EPA's best scientific judgement that, for this pesticide tolerance setting action, a conclusion can be made that there is ''a reasonable certainty of no harm'' that will result from possible water-borne residues of tetraconazole. Additionally, there are no residential uses, nor any other type of currently registered use, of tetraconazole. Due to the limited amounts of exposure to residues of tetraconazole anticipated to result from this emergency exemption use, and because of the conservative nature of this risk assessment, EPA believes that any potential exposure to residues of tetraconazole from drinking water will not result in levels of exposure that exceed margins of safety identified in this risk assessment.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfDs or acute dietary NOAELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause tetraconazole to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with tetraconazole in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* There are currently no other registered uses of tetraconazole. The only exposure to residues of tetraconazole would result from the subject emergency exemptions, and are described in detail throughout this document.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Tetraconazole is a member of the conazole class of pesticides. Other members of this class include hexaconazole, and propiconazole. All of the conazoles demonstrate carcinogenicity in animal studies. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether tetraconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tetraconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tetraconazole has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tetraconazole from food will utilize 4% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children up to 6 years of age. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tetraconazole in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

2. *Aggregate cancer risk for U.S. population*. Tetraconazole produced statistically significant increases in male and female mouse liver adenomas and carcinomas. Based on a determination of the Q1* for this tolerance setting action only, the Q1* was determined to be 3.7 x 10^{-2} based on benign tumors in males with the exclusion of the high dose group.

The cancer risk for the U.S. population is, without adjustment, 2.5 x 10^{-6}. Because this is an emergency exemption use of tetraconazole, it is considered appropriate to divide the cancer risk by a factor of 14 [5 years for potential emergency exemption use/70 years lifetime = 1/14].

The adjusted cancer risk for the U.S. population is 1.8 x 10^{-7} and this adjusted cancer risk is below EPA's level of concern.

3. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tetraconazole residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of tetraconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when

EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*— a. *Rats.* In the developmental study in rats, the maternal (systemic) NOAEL was 5 mg/kg/day, based on decreased body weight and decreased food consumption at the LOAEL of 22.5 mg/kg/day. The developmental (fetal) NOAEL was 22.5 mg/kg/day, based on visceral changes, supernumerary ribs, and delayed ossification at the LOAEL of 100 mg/kg/day.

b. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 15 mg/kg/day, based on decreased weight gain and decreased food consumption at the LOAEL of 30 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day highest dose tested (HDT).

iii. *Reproductive toxicity study*— *Rats.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOAEL was 0.7 mg/kg/day, based on dystocia, delayed vaginal opening, and increased liver weight at the LOAEL of 5.9 mg/kg/day. The developmental (pup) NOAEL was 0.7 mg/kg/day, based on increased time to observation of balanopreputial skin fold and liver weight at the LOAEL of 5.9 mg/kg/day. At the high dose of 35.5 mg/kg/day, there was a decrease in the mean number of live pups per litter on lactation days 0 and 4 (precull) in the presence of significant maternal toxicity.

iv. *Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for tetraconazole is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above, for tetraconazole there does appear to be an extra sensitivity for prenatal or postnatal effects. EPA has therefore concluded that, for purposes of this tolerance-setting action, the FQPA safety factor of 10 be reduced to three for both the acute and chronic dietary estimates, and be applied to all population subgroups.

v. *Conclusion.* There is a complete toxicity data base for tetraconazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* The acute dietary (food only) risk assessment used the ARC. The high-end exposure estimate (food only) of 0.002231 mg/kg/day, represents 13% of the PAD for children ages 1-6 years. As stated earlier, this should be viewed as a partially refined risk estimate; refinement using anticipated residue values and PCT data in conjunction with Monte Carlo analysis would result in a lower acute dietary exposure estimate.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tetraconazole from food will utilize 9% of the RfD for children ages 1-6 years. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tetraconazole in drinking water exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tetraconazole residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in sugar beet is adequately understood for the purpose of this tolerance action only. Ten-week old potted sugar beet plants in an outdoor field were treated with tetraconazole labeled with carbon-14 in the triazole ring at 100g/ha, and were then re-treated twice more at 21-day intervals. Samples of root and leaf were collected 0, 20, 41, and 76 days after the first treatment. The total radioactive residue (TRR) found in the root was always <0.01 ppm. TRRs in the leaf were 1.6, 1.9, 3.1, and 1.3 ppm, respectively. Over 90% of the TRR in beet leaf was extractable. The main residue was identified as tetraconazole, declining from 94-95% TRR (day 0 and 20) to 81% on day 41 and 54% on day 76. The TRR in the root was not characterized. The residue of concern is the parent compound, tetraconazole, in beet root and leaf.

The nature of the residue in the goat is adequately understood for the purpose of this tolerance action only. Upon dosing a lactating goat for 5 consecutive days with radiolabled tetraconazole (in phenyl and triazole rings), liver retained the highest radioactivity and muscle contained the lowest radioactivity. Tetraconazole was found to be the major residue in the liver and fat, and triazole was the major residue in milk, muscle and kidney.

B. Analytical Enforcement Methodology

An enforcement method for sugar beet and livestock commodities is not available. However, a method for measuring tetraconazole in beet root and top is available (MRID 44751314), and for measuring tetraconazole in livestock commodities is available (MRID 44751316). The registrant needs to conduct independent laboratory validation before these methods can be tested in EPA laboratories as enforcement methods.

To request information on the above referenced measuring methods, please contact: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

Residues of tetraconazole are not expected to exceed 6.0 ppm in sugar beet top, 0.10 ppm in roots, 0.20 ppm in dry pulp, 0.30 ppm in molasses, and 0.012 ppm in refined sugar as a result of the authorized emergency exemption use. Time-limited tolerances should be established on sugar beet top, root, pulp, and molasses.

Sugar beet tops, dry pulp, and molasses may be fed to cattle as a result of the authorized use. Secondary residues in animal commodities are not expected to exceed 0.050 ppm in milk, 6.0 ppm in liver, 0.60 ppm in fat, 0.20 ppm in kidney, and 0.030 ppm in muscle of cattle as a result of use authorized under these emergency exemptions. Time-limited tolerances should be established at these levels on milk, meat, meat byproducts, kidney, liver, and fat of cattle.

D. International Residue Limits

There are no CODEX MRLs, Canadian or Mexican tolerances established.

E. Rotational Crop Restrictions

Crops other than sugar beet should not be grown within 120 days following the last application of tetraconazole.

VI. Conclusion

Therefore, the tolerances are established for residues of tetraconazole in sugar beet roots at 0.10 ppm, 6.0 ppm in sugar beet top, 0.20 ppm in sugar beet dried pulp, 0.30 ppm in sugar beet molasses, 0.050 ppm in milk, 0.030 ppm in cattle meat and meat byproducts except kidney and liver, 0.20 ppm in cattle kidney, 6.0 ppm in cattle liver, and 0.60 ppm in cattle fat.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300931 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 4, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by the docket number OPP–300931, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the

Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–AMENDED

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a, 321(q) and 371.

2. Section 180.557 is added to read as follows:

§ 180.557 Tetraconazole; tolerances for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide tetraconazole [(+/-)-2-(2,4-dichlorophenyl)-3-(1*H*-1,2,4-triazol-1-yl) propyl 1, 1,2,2-tetrafluoroethyl ether] in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and be revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Beet, sugar, dried pulp.	0.20	12/31/01
Beet, sugar, molasses.	0.30	12/31/01
Beet, sugar, roots.	0.10	12/31/01
Beet, sugar, tops.	6.0	12/31/01
Cattle, fat	0.60	12/31/01
Cattle, kidney	0.20	12/31/01
Cattle, liver	6.0	12/31/01
Cattle, meat	0.030	12/31/01
Cattle, meat byproducts; except kidney and liver.	0.030	12/31/01
Milk	0.050	12/31/01

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–31546 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6483–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Baxter/Union Pacific Railroad Tie Treating Site, Laramie, Wyoming from the National Priorities List (NPL).

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Baxter/Union Pacific Railroad Tie Treating Site (Site) in Laramie, Wyoming, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Contingency Plan (NCP), promulgated by EPA pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA, in consultation with the State of Wyoming, has determined that the Site meets the criteria of the Resource Conservation and Recovery Act (RCRA) Deferral Policy, making it eligible for delisting pursuant to § 300.425 of the NCP. The Site is currently being addressed under RCRA, with permits and orders in place to ensure Site contamination is cleaned up.

EFFECTIVE DATE: December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Jaramillo, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Mail code: 8ENF–T, Denver, CO 80202, telephone (303) 312–6203.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is: The Baxter/Union Pacific Railroad Tie Treating Plant Site, in Laramie, Wyoming.

A Notice of Intent to Delete for this Site was published on September 23, 1999 (64 FR 51496). The closing date for comments on the Notice of Intent to Delete was October 26, 1999. Five comments were received during the comment period, all in support of the proposed deletion. In response, EPA would like to thank all those who commented. EPA now publishes this Notice of Deletion as the final step in removing the site from the NPL.

EPA identifies sites that present a significant risk to public health and the environment and maintains the NPL as

a list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future, NCP § 300.425(e)(3). Deletion of a site from the NPL does not affect the responsible party of liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 19, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VII.

For reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site ''Baxter/Union Pacific Tie Treating, Laramie, WY.''

[FR Doc. 99–31278 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–98; FCC 99–266]

Implementation of Local Competition Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission analyzes petitioners' requests for reconsideration or clarification of the access requirements the Commission implemented pursuant to Section 224 of the Communications Act, as amended by the 1996 Telecommunications Act, including capacity expansion, the exercise of eminent domain, reservation of space, utilities' access obligations, worker qualifications, the timing and manner of notification of modifications, allocation of modification costs, and state certification of access regulation. The general requirements are designed to give parties flexibility to reach agreements on access to utility-controlled poles, ducts, conduits and rights-of-way, without the need for regulatory intervention.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson, Cable Services Bureau (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order on Reconsideration* in CC Docket No. 96–98, FCC 99–266, adopted October 20, 1999, and released October 26, 1999. In the *Order on Reconsideration*, the Commission analyzes petitioners' requests for reconsideration or clarification of the access requirements contained in the *First Report and Order* (61 FR 45476–01), implemented pursuant to the *Notice of Proposed Rulemaking* (61 FR 18311) and Section 224 of the Communications Act, as amended by the 1996 Telecommunications Act. The complete text of the *Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service (''ITS, Inc.''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. In addition, the complete text of the *Order on Reconsideration* is available on the Internet at *http://www.fcc.gov/Bureaus/Cable/Orders/1999/fcc99266.txt.*

Synopsis of the Order on Reconsideration

1. Section 224 of the Communications Act, as amended by the 1996 Act, imposes upon all utilities, including local exchange carriers (''LECs''), the duty to ''provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.'' The *Local Competition Order* adopted general rules and guidelines regarding access to utility-controlled poles, ducts, conduits, and rights-of-way. The *Order on Reconsideration* analyzes petitioners' requests for reconsideration or clarification of the access requirements of the *Local Competition Order.*

2. *Key findings:*

Access to electric transmission facilities: Use of any utility pole, duct, conduit, or right-of-way for wire communications triggers access to all poles, ducts, conduits, and rights-of-way owned or controlled by a utility, including those not currently used for wire communications. To the extent an electric transmission facility is a 'pole, duct, conduit or right-of-way,' the facility would be subject to the access provisions of section 224.

Eminent domain: The right to exercise eminent domain is generally a matter of state law, exercised according to the varying limitations imposed by particular states. Neither the statute nor its legislative history offers convincing evidence that Congress intended for section 224 to compel a utility to exercise eminent domain. Accordingly, the *Order on Reconsideration* finds that section 224 does not create a federal requirement that a utility be forced to exercise eminent domain on behalf of third party attachers.

Capacity Expansion: The principle of nondiscrimination established by section 224(f)(1) requires a utility to take all reasonable steps to expand capacity to accommodate requests for attachment, just as it would expand capacity to meet its own needs. Before denying access based on a lack of capacity, a utility must explore potential accommodations in good faith with the party seeking access.

Reservation of Space: Attaching parties may use a utility's reserve space until the utility has an actual need for the space. A utility may recover the reserved capacity for its own use, based upon its actual need for the reserved capacity. Capacity that is allocated or planned for emergency purposes in a utility's contingency plan should not be subject to the access obligations of reserved capacity in general. A utility may reserve capacity to carry core utility communications capacity that is essential to the proper operations of the utility system.

Use of utility facilities for wire communications: Use of any utility pole, duct, conduit, or right-of-way for wire communications triggers access to all poles, ducts, conduits, and rights-of-way owned or controlled by the utility, including those not currently used for wire communications. In addition, internal communications are considered ''wire communications'' that trigger access obligations.

Use of non-utility employees: While utilities may ensure that individuals who work in proximity to electric lines to perform pole attachments and related activities meet utility standards for the performance of such work, utilities may not dictate the identity of the workers who will perform the work itself.

Notice of modifications: Under most circumstances, a utility should be able

to give 60-days' notice to attaching parties before facility modifications are undertaken, even in instances where a government or a government agency requires service to new customers in less that 60 days.

Allocation of costs: The statute does not require that an attaching entity receive compensation for modification costs it incurred that create excess rights-of-way that are later sold to other entrants by utility.

State certification: States that have previously certified their regulation of rates, terms and conditions of pole attachments need not re-certify in order to assert their jurisdiction over access. However, if a state that has not previously certified its authority over rates, terms and conditions wishes to begin to assert such jurisdiction, including jurisdiction over access pursuant to section 224(f), the state must certify in order to assert jurisdiction.

Ordering Clauses

3. Pursuant to sections 224, 251 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 224, 251 and 303(r), the Order on Reconsideration is *Adopted.*

4. Pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.106 of the Commission's rules, 47 CFR. 1.106 (1995), that the petitions for reconsideration or clarification are *Denied in Part* and *Granted in Part.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–31497 Filed 12–3–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990720198–9307–02; I.D. 070799B]

RIN 0648–AM36

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages, Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a regulatory amendment that separates shortraker and rougheye (SR/RE) rockfish from the aggregated rockfish species group for purposes of calculating maximum retainable bycatch (MRB) and reduces the percentages for SR/RE rockfish in the Eastern Regulatory Area (ERA) of the Gulf of Alaska (GOA) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE thereby reducing the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective January 5, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by US vessels is governed by regulations implementing the FMP at 50 CFR part 679. General regulations governing Federal fisheries are also found at 50 CFR part 600.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species that are closed to directed fishing relative to the amount of other species retained on board the vessel that are open for directed fishing. The MRB percentages serve as a management tool to slow down the harvest rates of non-target species by limiting the amount that can be retained on board a vessel. This total also is used to minimize regulatory discard of non-target species when they are taken incidental to other directed fisheries because MRBs avoid or delay placing a species on ''prohibited'' status, which prohibits any retention. The MRB percentages reflect a balance between slowing harvest rates and minimizing the potential for undesirable discard. Although directed fishing for a species or species group may be prohibited under 50 CFR 679.20(d)(1)(iii), fishermen may ''top off'' their retained catch of these species by deliberately targeting the incidental species up to the MRB amount.

This final rule makes the following regulatory changes: (1) Removes SR/RE rockfish from the GOA-wide aggregated rockfish species group for deep-water complex species (primarily Pacific ocean perch and sablefish), (2) Creates a new species group for SR/RE rockfish in the ERA of the GOA for deep-water complex species, and (3) Sets the new SR/RE rockfish MRB at 7 percent relative to deep-water complex species. This final rule does not change the MRB of 5 percent for SR/RE rockfish in the GOA-wide aggregated rockfish category relative to shallow-water complex species.

Additional information on this action is contained in the preamble to the proposed rule and the EA/RIR/FRFA. The proposed rule was published in the **Federal Register** on August 3, 1999 (64 FR 42080), and the public comment period ended on September 2, 1999. NMFS received no comments on the proposed rule and no changes from the proposed rule are made in this final rule.

Compliance Guide for Small Entities

In compliance with the Small Business Regulatory Enforcement Fairness Act of 1996, NMFS is publishing this paragraph as a compliance guide that explains how small entities must comply with the regulatory changes made by this final rule. This rule changes the maximum retainable amounts of SR/RE rockfish in the ERA of the GOA and affects all small entities that participate in groundfish fisheries in the ERA of the GOA and experience incidental catch of SR/RE rockfish. Affected fishermen should be aware that the MRB rates have changed for SR/RE in the ERA of the GOA. Affected fishermen must comply with the regulations concerning MRB rates at § 679.20(e) and Table 10 to part 679.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the GOA. The Regional Administrator also determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable law. This action has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) that describes the impact this final rule will

have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS received no comments on the Interim Regulatory Flexibility Analysis prepared for the proposed rule for this action.

This action is being taken because harvest of SR/RE has significantly exceeded the total allowable catch (TAC) for SR/RE in the ERA of the GOA in each of the last 4 years. In 1998, while participating in the rockfish fisheries, 23 small trawl catcher vessels and 17 catcher/processors accounted for 772 mt of SR/RE harvest in the GOA (roughly 45 percent of the total harvest of SR/RE). Also in 1998, 484 small hook-and-line catcher vessels harvested 710 mt of SR/RE while participating in the sablefish fishery. Of the total 1,482 mt of SR/RE harvested by these two sectors, only 1,064 mt was actually retained (about 72 percent of the total catch amount). About 50 percent of the SR/RE harvested was in SR/RE directed hauls. These hauls, composed primarily of SR/RE, are likely to be ''top off'' hauls, some of which would no longer be available given the reduced ability to ''top off'' at historic levels. Any marginal loss in the short-term due to reduced retention of SR/RE would be offset by the long-term viability of the fishery by harvesting at maximum acceptable biological levels.

The preferred alternative, which this rule implements, of reducing the MRB for SR/RE in the ERA of the GOA was found to be the least restrictive on small entities while maximizing the harvest of SR/RE within the TAC amount. Under the status quo alternative, fishing mortality of SR/RE would continue at levels above the acceptable biological catch and would likely cause adverse impacts to the fishery resulting in reduced stocks; therefore, the alternative was rejected. The alternative of reducing the MRB in all areas of the GOA also was rejected because it was too restrictive on entities fishing in areas that have not exceeded acceptable harvest amounts within the last 3 years.

This final rule does not contain reporting, recordkeeping, or compliance requirements and no relevant Federal rules duplicate, overlap, or conflict with this final rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 30, 1999.

Garry F. Mayer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is 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.*

2. In part 679, Table 10 to Part 679—Gulf of Alaska Retainable Percentages is revised to read as follows:

* * * * *

TABLE 10 TO PART 679.—GULF OF ALASKA RETAINABLE PERCENTAGES

[Incidental Catch Species [1]]

	Pollock	Pacific cod	Deep flatfish	Rex sole	Flat-head sole	Shal-low flatfish	Arrowtooth	Sable-fish	Aggre-gated rock-fish [2]	SR/RE ERA [3]	DSR SEO [4]	Atka mack-erel	Aggre-gated forage fish [5]	Other species
BASIS SPECIES [1]														
Pollock	[6] na	20	20	20	20	20	35	1	5	[6] na	10	20	2	20
Pacific cod	20	[6] na	20	20	20	20	35	1	5	[6] na	10	20	2	20
Deep flatfish	20	20	[6] na	20	20	20	35	7	15	7	1	20	2	20
Rex sole	20	20	20	[6] na	20	20	35	7	15	7	1	20	2	20
Flathead sole	20	20	20	20	[6] na	20	35	7	15	7	1	20	2	20
Shallow flatfish	20	20	20	20	20	[6] na	35	1	5	[6] na	10	20	2	20
Arrowtooth	5	5	0	0	0	0	[6] na	0	0	0	0	0	2	0
Sablefish	20	20	20	20	20	20	35	[6] na	15	7	1	20	2	20
Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	[6] na	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
DSR–SEO	20	20	20	20	20	20	35	7	15	7	[6] na	20	2	20
Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	[6] na	10	[6] na	2	20
Other species	20	20	20	20	20	20	35	1	5	[6] na	10	20	2	[6] na
Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	[6] na	10	20	2	20

[1] For definition of species, see Table 1 of the GOA groundfish specifications.
[2] Aggregated rockfish means rockfish defined at § 679.2 except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category and in the Eastern Regulatory Area where shortraker/rougheye (SR/RE) rockfish is a separate category for the deep water complex only.
[3] SR/RE ERA=shortraker/rougheye rockfish in the Eastern Regulatory Area.
[4] SEO=Southeast Outside District.
[5] Forage fish are defined at § 679.2.
[6] na=not applicable.

[FR Doc. 99–31555 Filed 12–3–99; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 233
Monday, December 6, 1999

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–325–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require a measurement of the resistance of the electrical connectors of the auxiliary power unit (APU) to detect a short circuit; an inspection to determine if the grommets or shrink sleeves are present; and modification, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and prevent a short circuit of a fire extinguisher electrical system due to a lack of shrink sleeves or grommets, and consequent disabling of the affected fire extinguisher system.

DATES: Comments must be received by January 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–325–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 series airplanes. The RLD advises that a fire extinguisher electrical circuit for the auxiliary power unit (APU) was found shorted. A subsequent inspection revealed that similar conditions affected the engine fire extinguisher circuits, due to twisted wires that allowed the contact pins to touch. Further investigation established that certain types of electrical cartridge connectors on both the engine and APU fire extinguisher bottles did not have heat shrink sleeves installed during production. In this condition, a short circuit cannot be detected by the resistance check described in the current maintenance program. The lack of shrink sleeves or grommets, if not corrected, could result in a short circuit of a fire extinguisher electrical system, and consequent disabling of the affected fire extinguisher system.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–26–015, dated August 15, 1999, which describes procedures for performing a measurement of the resistance of the electrical lines on the auxiliary power unit (APU) and engine fire extinguishers to detect a short circuit; a general visual inspection to determine if the grommets or shrink sleeves are present; and modification, if necessary. The modification involves applying shrink sleeves to electrical wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1999–110, dated August 31, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation

described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 123 airplanes of US registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the measurement specified in Part A of the referenced service bulletin, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this measurement proposed by this AD on U.S. operators is estimated to be $14,760, or $120 per airplane.

It would take approximately 1 work hour per airplane to accomplish the inspection specified in Part B of the referenced service bulletin, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $7,380, or $60 per airplane.

Should an operator be required to accomplish the modification specified in Part B of the referenced service bulletin, it would take approximately 2 works hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed 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) 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. A copy of the draft regulatory evaluation prepared for this action 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 the following new airworthiness directive:

Fokker Services B.V.: Docket 99–NM–325–AD.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane 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 airplanes 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 (b) 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: Required as indicated, unless accomplished previously.

To detect and prevent a short circuit of a fire extinguisher electrical system due to a lack of shrink sleeves or grommets, and consequent disabling of the affected fire extinguisher system, accomplish the following:

Inspection and Modification, If Necessary

(a) Within 12 months after the effective date of this AD, perform a measurement of the resistance of the electrical lines on the auxiliary power unit (APU) and engine fire extinguisher bottles to detect a short circuit, in accordance with Part A of the Accomplishment Instructions of Fokker Service Bulletin SBF100–26–015, dated August 15, 1999.

(1) If no short circuit is detected, at the next scheduled weight check of the fire extinguishing bottle, or within 2 years after the inspection required by paragraph (a) of this AD, whichever occurs first, perform a general visual inspection to determine if the grommets or shrink sleeves are present and installed properly. If any grommet or shrink sleeve is missing or not installed properly, prior to further flight, perform the modification of the connectors, in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(2) If any short circuit is detected, prior to further flight, perform a general visual inspection to determine if the grommets or shrink sleeves are present and installed properly. If any grommet or shrink sleeve is missing or not installed properly, prior to further flight, perform the modification of the connectors, in accordance with Part B of the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1999–110, dated August 31, 1999.

Issued in Renton, Washington, on November 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31475 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require repetitive inspections to detect fatigue cracking of the pitch load fittings of the wing front spar, and rework, if necessary. This proposal is prompted by a structural fatigue analysis that shows that the operational loads of the nacelle are higher than the loads used during initial design of the Model 767. The actions specified by the proposed AD are intended to detect and correct fatigue cracking in the pitch load fittings of the wing front spar, which could result in reduced structural integrity of the strut.

DATES: Comments must be received by January 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–182–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–182–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–182–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that structural fatigue analysis on the Boeing Model 767 series airplane shows that the operational loads of the nacelle are higher than the loads used during initial design of the Boeing Model 767 series airplane. Higher operational loads could lead to fatigue cracking in the pitch load fittings of the wing front spar initiating earlier than expected. Structural assessment indicated that certain design changes would be needed on the strut-to-wing structure of the airplane to ensure that fatigue cracking would not occur during the Model 767 design service objective of 20 years or 50,000 flight cycles. Fatigue cracking of the pitch load fittings of the wing front spar, if not corrected, could result in reduced structural integrity of the strut.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999, which describes procedures for repetitive inspections to detect cracking of the pitch load fittings of the wing front spar, and rework, if necessary. The service bulletin describes procedures for two different methods for accomplishing an inspection. One method involves performing repetitive ultrasonic and eddy current inspections to detect cracking of the pitch load fittings. In lieu of that method, the service bulletin describes another inspection method that involves removing the upper link and performing a high frequency eddy current inspection to detect cracking of the pitch load fittings, and a detailed visual inspection to detect damage or corrosion of the inner and outer face pad-up areas of the pitch load fittings and to determine if the pad-up areas are parallel. The procedures for rework described in the service bulletin include reworking the inner or outer face of the pitch load fitting, reworking the lugs of the pitch load fittings, and installing new bushings. (The service bulletin describes two alternatives for installing the bushings.)

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This Proposed AD and the Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative

who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 663 airplanes of the affected design in the worldwide fleet. The FAA estimates that 312 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $187,200, or $600 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed 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) 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. A copy of the draft regulatory evaluation prepared for this action 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 the following new airworthiness directive:

Boeing: Docket 99–NM–182–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 663 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes 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 (g) 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: Required as indicated, unless accomplished previously.

To detect fatigue cracks in the pitch load fittings of the wing front spar, which could result in reduced structural integrity of the strut, accomplish the following:

(a) Accomplish the requirements of either paragraph (b) or (c) of this AD at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the initial inspection threshold specified in Figure 1, Table 1.1 of Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

(2) Within 3,000 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

Note 2: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 767–57–0053, dated June 27, 1996; or Revision 1, dated October 31, 1996; are considered acceptable for compliance with the applicable action specified in this amendment.

Option 1: Ultrasonic and Eddy Current Inspections

(b) Perform ultrasonic and eddy current inspections to detect cracks of the pitch load fittings of the wing front spar, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

(1) If no crack is detected, repeat the inspections thereafter at the interval specified in Table 1.2 of Figure 1 of the service bulletin.

(2) If any crack is detected, prior to further flight, remove the upper link and the pitch load fitting bushings, and accomplish both paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Perform a detailed visual inspection of the inner and outer face pad-up areas of the pitch load fittings to detect damage or corrosion and to determine if the pad-up areas are parallel, in accordance with the service bulletin. Except as provided by paragraph (f) of this AD, if any damage, corrosion, or non-parallelism is detected, prior to further flight, rework the inner or outer face of the pitch load fitting where damage or corrosion was detected, and make pad-up areas parallel, as applicable, in accordance with the service bulletin.

(ii) Accomplish paragraph (d) of this AD.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Option 2: High Frequency Eddy Current and Detailed Visual Inspections

(c) Remove the upper link and accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

(1) Perform a high frequency eddy current inspection to detect cracking of the pitch load fittings of the wing front spar.

(2) Perform a detailed visual inspection of the inner and outer face pad-up areas of the pitch load fittings to detect damage or corrosion and to determine if the pad-up areas are parallel. Except as provided by paragraph (f) of this AD, if any damage, corrosion, or non-parallelism is detected, prior to further flight, rework the inner or outer face of the pitch load fitting where damage or corrosion was detected, and make pad-up areas parallel, as applicable, in accordance with the service bulletin.

Rework

(d) For airplanes on which any cracking is detected during any inspection required by paragraph (b) of this AD, or on which the requirements of paragraph (c) of this AD have been accomplished: Prior to further flight, accomplish paragraph (d)(1) or (d)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999; and accomplish paragraph (e) of this AD.

(1) For airplanes inspected in accordance with paragraph (c) of this AD and on which no cracking was detected: Make an insurance cut of the pitch load fitting lug.

(2) For airplanes on which any cracking was detected during any inspection required by paragraph (b) or (c) of this AD: Except as provided by paragraph (f) of this AD, rework the lugs of the pitch load fittings of the wing front spar.

Bushing Installation

(e) For airplanes on which the requirements specified in paragraph (d) of this AD have been accomplished: Prior to further flight, install new bushings in the pitch load fittings of the wing front spar as

specified in paragraph (e)(1) or (e)(2) of this AD, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

(1) Option 1: Install new bushings using the high interference fit method, and repeat the inspections required by paragraph (b) or (c) of this AD at the intervals specified in Table 1.3 of Figure 1. of the service bulletin.

(2) Option 2: Install new bushings using the FORCEMATE method, and repeat the inspections required by paragraph (b) or (c) of this AD at the interval specified in Table 1.4 of Figure 1. of the service bulletin.

(f) If any damage is detected that is outside the limits specified in Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999, and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(g) 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 30, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31476 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–334–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400A and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model 400A and 400T series airplanes. This proposal would require a one-time inspection to detect incorrect wiring of the engine fire extinguisher bottle squibs, and corrective action, if necessary. It would also require a modification to the wiring and the addition of wire harness and bottle labeling for future reference. This proposal is prompted by reports of incorrect wiring of the engine fire extinguisher bottle squibs. The actions specified by the proposed AD are intended to prevent failure of the engine fire extinguisher bottle to discharge, or discharge of the wrong engine fire extinguisher bottle.

DATES: Comments must be received by January 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–334–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Todd Dixon, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4152; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–334–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–334–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received 5 reports indicating that incorrect wiring of the fire extinguisher bottle squibs was found. This incorrect wiring consisted of some fire extinguisher bottle squibs having the positive and negative wires reversed and some fire extinguisher bottle squibs having the left and right engine fire extinguisher harnesses reversed. This condition, if not corrected, could result in failure of the engine fire extinguisher bottle to discharge, or discharge of the wrong engine fire extinguisher bottle.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999, which describes procedures for a one-time inspection to detect incorrect wiring (i.e., wiring that does not agree with the wiring manual) of the engine fire extinguisher bottle squibs, and repair, if necessary. The service bulletin also describes a modification to the wiring and the addition of wire harness and bottle labeling for future reference. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 350 airplanes of the affected design in the worldwide fleet. The FAA estimates that 310 airplanes of U.S. registry would be affected by this proposed AD.

It is estimated that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection portion of the proposed AD on U.S. operators is estimated to be $18,600, or $60 per airplane.

It is estimated that it would take approximately 2 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification portion of the proposed AD on U.S. operators is estimated to be $37,200, or $120 per airplane.

Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $55,800, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed 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) 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. A copy of the draft regulatory evaluation prepared for this action 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech): Docket 99–NM–334–AD.

Applicability: Model 400A series airplanes, serial numbers RK–45 and RK–49 through RK–209 inclusive; Model 400T series airplanes (T–1A), serial numbers TT–01 through TT–180 inclusive; and Model 400T series airplanes (TX), serial numbers TX–01 through TX–09 inclusive; certificated in any category.

Note 1: This AD applies to each airplane 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 airplanes 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 (c) 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: Required as indicated, unless accomplished previously.

To prevent failure of the engine fire extinguisher bottle to discharge, or discharge of the wrong engine fire extinguisher bottle, accomplish the following:

Inspection and Corrective Action

(a) Within 50 flight hours after the effective date of this AD: Perform a one-time general visual inspection of the left and right engine fire extinguisher bottle squibs to detect wiring that is incorrect as specified by Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999. Perform the inspection in accordance with the service bulletin. If any incorrect wiring is detected, prior to further flight, repair it in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Modification

(b) Within 200 flight hours after the effective date of this AD: Modify and re-label the wiring of the left and right engine fire extinguisher bottle squibs, in accordance with Raytheon Aircraft Service Bulletin SB 26–3250, Revision 1, dated July 1999.

Alternative Methods of Compliance

(c) 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, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 24, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31478 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–74–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100, –100C, and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727–100, –100C, and –200 series airplanes. For certain airplanes, this proposal would require a one-time inspection of certain fuselage circumferential skin joints to determine the type of fasteners installed, and replacement of any aluminum fasteners with steel fasteners, if necessary; or modification of certain fuselage circumferential skin joints; as applicable. For certain other airplanes, this proposal would also require repetitive inspections to detect corrosion, sealant deterioration, cracking, or disbonding; repair, if necessary; and modification of certain fuselage circumferential skin joints. This proposal is prompted by reports of corrosion between the body skins and cold-bonded doublers at the fuselage circumferential skin joints. The actions specified by the proposed AD are intended to prevent delamination of the cold-bonded doublers, which could result in corrosion of the body skins and doublers, and consequent reduced structural capability of the fuselage circumferential skin joints.

DATES: Comments must be received by January 20, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–74–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1990, the FAA issued AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990), which required incorporation of certain structural modifications on certain Boeing Model 727 series airplanes, in accordance with Boeing Document No. D6–54860, Revision C, dated December 11, 1989, ''Aging Airplane Service Bulletin Structural Modification Program—Model 727.'' One of those modifications was replacement of countersunk fasteners installed at cold-bonded doublers of fuselage circumferential skin joints at body stations (BS) 259, 360, 441, 481, and 681 with oversize, protruding-head fasteners. That AD was prompted in part by reports of corrosion between the body skins and cold-bonded doublers at the fuselage circumferential skin joints. Delamination of the cold-bonded doublers allows moisture to enter voids caused by the bond separation, which could result in corrosion of the body skins and doublers, and consequent reduced structural capability of the fuselage circumferential skin joints.

Since the issuance of AD 90–06–09, the airplane manufacturer has notified the FAA that the incorrect fastener type was used in the modification of the fuselage circumferential skin joints required by that AD. Aluminum fasteners were used for that modification; the airplane manufacturer now knows that aluminum fasteners reduce the structural capability of the fuselage circumferential skin joints.

In 1990, the FAA also issued AD 90–26–09, amendment 39–6835 (55 FR 51403, December 14, 1990), which required repetitive inspections of certain fuselage circumferential skin joints, and repair, if necessary, in accordance with Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. The modification of the fuselage circumferential skin joints required by AD 90–06–09 was considered terminating action for certain repetitive inspections required by AD 90–26–09.

Since the issuance of AD 90–26–09, the airplane manufacturer has notified the FAA that certain airplanes were inadvertently not included in the effectivity listing in paragraph I.A.1. of Boeing Service Bulletin 727–53–0084, Revision 4, although they were included in the effectivity statement in the summary of the service bulletin. The FAA has determined that operators of those airplanes may not realize that those airplanes are subject to AD 90–26–09. In addition, the airplane manufacturer has notified the FAA that

those same airplanes were also inadvertently not included in the effectivity listing of Boeing Document No. D6–54860, Revision C, and hence, were also omitted from the applicability of AD 90–06–09. Those airplanes are subject to the same unsafe condition as the airplanes that are included in the applicability statements of those two AD's. Therefore, the FAA finds that additional rulemaking is necessary to ensure that the unsafe condition is addressed on all affected airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990, which describes procedures for repetitive inspections of the cold-bonded doublers of the fuselage circumferential skin joints at BS 259, 360, 441, 481, and 681; and repair, if necessary. The inspections include an external detailed visual inspection to detect corrosion and sealant deterioration, a low frequency eddy current (LFEC) inspection to detect corrosion, a high frequency eddy current (HFEC) inspection to detect cracking, and an internal detailed visual inspection to detect cracking, sealant deterioration, or disbonding. The service bulletin also describes procedures for modification of the cold-bonded doublers in those areas. In addition, the service bulletin describes procedures for a one-time inspection of the fuselage circumferential skin joints at BS 259, 360, 441, 481, and 681 to determine the type of fasteners installed, and replacement of any aluminum fasteners with steel fasteners, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Operators should also note that, for those airplanes on which modification of cold-bonded doublers of certain fuselage circumferential skin joints has already been accomplished, this AD proposes only to mandate the one-time inspection of the joints to determine the type of fastener installed, and replacement of any aluminum fasteners with steel fasteners, if necessary; or modification of certain fuselage circumferential skin joints; as applicable.

Operators should also note that this proposed AD would require the repetitive inspections and modification of the cold-bonded doublers of certain fuselage circumferential skin joints for only certain airplanes. These airplanes were inadvertently omitted from the applicability of AD 90–26–09.

The service bulletin recommends accomplishing the repetitive internal visual inspections every 30 months if the repetitive HFEC inspection is accomplished every 48 months, or accomplishing the repetitive internal visual inspections every 48 months if the repetitive HFEC inspection is accomplished every 15 months. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections. In light of all of these factors, the FAA finds a 48-month compliance time for both the internal visual inspection and the HFEC inspection to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. This compliance time is consistent with that specified in AD 90–26–09.

Cost Impact

There are approximately 549 airplanes of the affected design in the worldwide fleet. Based on a records review, the FAA estimates that only 374 of those airplanes are still in service. The FAA estimates that 280 airplanes of U.S. registry still in service would be affected by this proposed AD.

The number of airplanes that would be subject to the proposed one-time inspection to determine the type of fasteners installed is unknown. For affected airplanes, it would take approximately 45 work hours per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $2,700 per airplane.

The FAA estimates that 3 airplanes of U.S. registry would be required to perform the external detailed visual inspection of certain fuselage circumferential skin joints that is proposed in this AD action. It would take approximately 8 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $1,440, or $480 per airplane, per inspection cycle.

The FAA estimates that 3 airplanes of U.S. registry would be required to perform the internal detailed visual inspection of certain fuselage circumferential skin joints that is proposed in this AD action. It would take approximately 12 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $2,160, or $720 per airplane, per inspection cycle.

The FAA estimates that 3 airplanes of U.S. registry would be required to perform the LFEC inspection of certain fuselage circumferential skin joints that is proposed in this AD action. It would take approximately 100 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $18,000, or $6,000 per airplane, per inspection cycle.

The FAA estimates that 3 airplanes of U.S. registry would be required to perform the HFEC inspection of certain fuselage circumferential skin joints that is proposed in this AD action. It would take approximately 24 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $4,320, or $1,440 per airplane, per inspection cycle.

For affected airplanes, it would take approximately 192 work hours per airplane to accomplish the proposed modification of the cold-bonded doublers of certain fuselage circumferential skin joints, at an average labor rate of $60 per work hour. Required parts would cost

approximately $1,250. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $12,770 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed 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) 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. A copy of the draft regulatory evaluation prepared for this action 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.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 the following new airworthiness directive:

Boeing: Docket 99–NM–74–AD.

Applicability: Model 727–100, –100C, and –200 series airplanes; line numbers 1 through 549 inclusive; certificated in any category.

Note 1: This AD applies to each airplane 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 airplanes 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 (g)(1) 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: Required as indicated, unless accomplished previously.

To prevent delamination of the cold-bonded doublers, which could result in corrosion of the body skins and doublers, and consequent reduced structural capability of the fuselage circumferential skin joints, accomplish the following:

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

One-Time Inspection/Replacement

(a) For airplanes on which the modification specified in Boeing Service Bulletin 727–53–0084, Revision 2, dated June 5, 1972, and the additional actions (including additional fastener replacement locations) specified in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, ''Aging Airplane Service Bulletin Structural Modification Program—Model 727''; or the modification specified in Boeing Service Bulletin 727–53–0084, Revision 3, dated September 28, 1989; HAS been accomplished: Within 36 months after the effective date of this AD, perform a one-time inspection of the fuselage circumferential skin joints to determine the type of fastener installed, in accordance with Figure 7 of the Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990.

(1) If no aluminum fasteners are found, no further action is required by this AD.

(2) If any aluminum fastener is found, prior to further flight, replace with a steel fastener, in accordance with Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990.

Modification

(b) For airplanes listed in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, ''Aging Airplane Service Bulletin Structural Modification Program—Model 727'' on which the modification specified in Boeing Service Bulletin 727–53–0084, Revision 2, dated June 5, 1972, and the additional actions specified in Boeing Document No. D6–54860, Revision C, dated December 11, 1989; or the modification specified in Boeing Service Bulletin 727–53–0084, Revision 3, dated September 28, 1989; has not been accomplished prior to the effective date of this AD: Prior to the accumulation of 60,000 total flight cycles, modify the fuselage circumferential skin joints in accordance with Part IV of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Such action constitutes terminating action for the modification in that area required by AD 90–06–09.

Repetitive Inspections

(c) For airplanes having line numbers 153, 339, 416, and 540: Accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD at the compliance time specified in those paragraphs.

(1) Within 15 months after the effective date of this AD, perform an external detailed visual inspection and a low frequency eddy current (LFEC) inspection of the fuselage circumferential skin joints to detect corrosion or sealant deterioration, in accordance with Parts II.A. and II.B. of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Repeat the external detailed visual inspection thereafter at intervals not to exceed 15 months, and repeat the LFEC inspection thereafter at intervals not to exceed 30 months.

(2) Within 3,000 flight cycles or 30 months after the effective date of this AD, whichever occurs first, perform a high frequency eddy current (HFEC) inspection of the fuselage circumferential skin joints to detect cracking, in accordance with Part II.D. of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Repeat the HFEC inspection thereafter at intervals not to exceed 4,000 flight cycles or 48 months, whichever occurs first, until accomplishment of paragraph (f) of this AD.

(3) Within 48 months after the effective date of this AD, perform an internal detailed visual inspection of the fuselage circumferential skin joints to detect cracking, disbonding, or sealant deterioration; in accordance with Part II.C. of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 48 months.

Repair

(d) For airplanes having line numbers 153, 339, 416, and 540: If any discrepancy is detected during any inspection required by paragraph (c) of this AD, accomplish paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If any corrosion, cracking, or disbonding is detected during any inspection required by paragraph (c) of this AD, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990, except as provided by paragraph (e) of this AD. No

further action is required by this AD for that area.

(2) If the sealant has deteriorated but no corrosion, cracking, or disbonding is detected during any inspection required by paragraph (c) of this AD, prior to further flight, reseal in accordance with Figure 5 or 6, as applicable, of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990.

(e) Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, or a Boeing DER, as required by this paragraph, the approval letter must specifically reference this AD.

Modification

(f) For airplanes having line numbers 153, 339, 416, and 540: Prior to the accumulation of 60,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, modify the fuselage circumferential skin joints in accordance with Part IV of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0084, Revision 4, dated August 2, 1990. Such action constitutes terminating action for the requirements of paragraph (c)(2) of this AD.

Alternative Methods of Compliance

(g)(1) 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) An alternative method of compliance for paragraph (f) of this AD that provides an acceptable level of safety may be used in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 30, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31477 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0016b; FRL–6482–8]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Road Salting and Sanding, Control of Installations, Revisions to Salting and Sanding Requirements and Deletion of Non-Ferrous Smelter Orders, Incorporation by Reference, and Nonsubstantive Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action to approve State Implementation Plan (SIP) revisions submitted by the Governor of the State of Utah on February 1, 1995, for the purpose of establishing new requirements for road sanding and salting in section 9.A.6.7 (referred to by the State as section IX.A.6.g) of the SIP and in UACR R307–1–3, updating the incorporation by reference in R307–2–1, deleting obsolete measures for nonferrous smelters in R307–1–3, and nonsubstantive changes to UACR R307–1–1, R307–1–3 and R307–2–1. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before January 5, 2000.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 9, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–31534 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NOS. MT–001–0012b; MT–001–0013b; MT–001–0014b; MT–001–0015b; FRL–6482–7]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Emergency Episode Plan, Columbia Falls, Butte and Missoula Particulate Matter State Implementation Plans, Missoula Carbon Monoxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana. The revisions update the State of Montana's Emergency Episode Plan; Columbia Falls, Butte and Missoula Particulate Matter (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10)) SIPS; and the Missoula Carbon Monoxide (CO) Plan. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule

without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before January 5, 2000.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand , EPA, Region VIII, (303) 312–6437.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 22, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–31537 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[SIPTRAX No. PA138; FRL–6500–8]

Approval and Promulgation of Air Quality Implementation Plans; Allegheny County Portion of the Commonwealth of Pennsylvania's Operating Permits Program, and Federally Enforceable State Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes three actions. First, EPA proposes approval of a partial Operating Permit Program under the Clean Air Act (the Act), for the purpose of allowing the Allegheny County (Pennsylvania) Health Department (ACHD) to issue operating permits to all major stationary sources in its jurisdiction. Second, EPA proposes approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for ACHD. This revision establishes a Federally Enforceable State Operating Permit (FESOP) Program and gives ACHD the authority to create federally enforceable installation and operating permit conditions for regulated pollutants and limits on potential to emit (PTE) for hazardous air pollutants (HAPs) for the purpose of allowing sources to avoid major source applicable requirements. Third, EPA proposes approval of the mechanism for ACHD to receive delegation of Maximum Achievable Control Technology (MACT) Standards for major sources subject to operating permit program requirements.

DATES: Written comments must be received on or before January 5, 2000.

ADDRESSES: Written comments may be mailed to Kathleen Henry, Chief, Permitting and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Allegheny County Health Department Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: MaryBeth Bray, (215) 814–2632.

SUPPLEMENTARY INFORMATION: On November 5, 1998 the Commonwealth of Pennsylvania submitted a revision to its SIP on behalf of the ACHD to establish two permitting programs; the FESOP program pursuant to part 52 of Title 40 of the Code of Federal Regulations (CFR), and the Title V Operating Permit Program pursuant to 40 CFR part 70. The submittal also included a request for delegation of MACT standards for HAPs from section 112 of the Act. EPA is proposing approval of Pennsylvania's request for two permitting programs for the ACHD as well as the mechanism for the ACHD to receive delegation of section 112 standards.

Submittal Description

The ACHD November 5, 1999 submittal contained numerous revisions to the SIP, including a recodification of the regulations in general, revision to major and minor New Source Review and Prevention of Significant Deterioration programs, as well as requests for approval or delegation of programs under 40 CFR parts 52, 63, and 70. Today's rulemaking action only involves approval of the FESOP and part 70 permitting programs, and approval of the mechanism for delegation of programs under section 112 of the Act.

EPA is proposing several significant changes and additions to the ACHD's existing SIP-approved installation (preconstruction) and operating permit programs. One purpose of these proposed SIP revisions is to make all of the ACHD's SIP-approved permit programs consistent with one another and with the Clean Air Act. Another important purpose of the proposed SIP revision is to allow the ACHD, upon approval, to limit sources' PTE for the purpose of exempting certain sources from Title V and other major source requirements of the Act.

ACHD submitted the permitting programs through the Commonwealth of Pennsylvania, requesting the authority to issue operating permits (Title V and FESOP) to sources of air pollutants within its jurisdiction. The ACHD adopted the necessary regulations on October 5, 1995 and submitted a program approval request to the Commonwealth of Pennsylvania. On November 5, 1998, the Commonwealth of Pennsylvania submitted the program on behalf of ACHD to EPA for review. In addition, a three-way implementation agreement (IA) between the ACHD, Pennsylvania Department of Environmental Protection (PADEP), and the EPA was submitted on August 9, 1999 to clarify certain procedural issues

not included in the November 5, 1998 submittal. EPA found the submittal to be administratively complete pursuant to 40 CFR 70.4(e)(1) on February 2, 1999. EPA has concluded that the part 70 program and the FESOP program meet all the necessary requirements of part 70 and part 52, respectively, and is proposing to grant full approval to both of these programs. EPA has also concluded that the ACHD's program is adequate for approving the mechanism needed to delegate section 112 programs. For more detailed information on the analysis of the ACHD's submission, please refer to the technical support document included in the docket at the address noted above.

Part 70 Background

Major sources of air pollutants are required under Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Act) to obtain operating permits. EPA has promulgated rules which define the minimum elements of an approvable state or local operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of operating permits programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 CFR part 70. Title V requires state or local agencies to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval.

EPA approved the Commonwealth of Pennsylvania's program, which applied statewide, on August 29, 1996. As of that date, all major stationary sources in Pennsylvania subject to Title V permitting requirements were required to meet a one-year schedule for submitting a Title V permit application. Today's proposed rulemaking action addresses a request by Pennsylvania on behalf of the ACHD for approval of a partial program under 40 CFR 70.4. This proposed rulemaking action would allow the ACHD to carry out a Title V permitting program within its jurisdiction. Approval of this request will not change the obligation for sources located anywhere in Pennsylvania to meet the initial Title V application deadlines.

Discussion of Part 70 Submittal

The ACHD's Title V permitting regulations include Article XXI Chapters 2102, 2103, 2104, and 2109 as well as definitions in section 2101.20. EPA has determined that these regulations fully meet the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5, and 70.6 with respect to permit content; § 70.5 with respect to complete application forms and criteria which define insignificant activities; § 70.7 with respect to public participation and minor permit modifications; and § 70.11 with respect to requirements for enforcement authority. The technical support document contains a detailed analysis of the ACHD's program and describes the manner in which it meets all the operating permit program requirements of 40 CFR part 70. However, several issues were identified by EPA during its review of the ACHD's Title V operating permit program which warrant a more detailed discussion and analysis. These issues are outlined below. A discussion on fee adequacy is also included in this section.

1. Legal Opinion

The legal opinion did not address the time frame required for petitions for judicial review and the judicial review requirements for failure to issue minor permits. The discussion below shows how the ACHD's program meets these requirements.

a. *Time frame for judicial review:* Although the Title V regulations do not specify the time frame for filing a petition for judicial review, the ACHD is generally subject to ACHD Article XI, Hearings and Appeals. In order to obtain judicial review, section 1104(a) requires that an Appellant must first file a notice of Appeal to the Director of the ACHD and go through an administrative hearing process. The Notice of Appeal must be filed no later then 10 days after written notice or issuance of the action by which the Appellant is aggrieved. This meets the 90 day (or shorter time period) requirement for initiating judicial review.

b. *Judicial review for failure to act on minor permits:* The ACHD's program does not address judicial review for failure to issue a minor permit modification as a separate appealable action. Section 2103.14(c)(8) clearly requires final action within 60 days for any proposed minor permit modification. Section 2103.11(f) states that the Department's failure to take final action (on any permit application including modifications) is appealable and the Court of Common Pleas may require action on the application without further delay. Therefore, the authority exists to compel action on minor permit modifications.

2. Transition Plan

The transition plan included in section 2103.01 of the ACHD's regulations specified deadlines for permit application submittal and permit issuance. These dates have passed. Nonetheless, EPA previously approved Pennsylvania's Title V program on August 29, 1996 (see 61 FR 39598) which established deadlines for permit applications that applied state-wide. The ACHD's request to have a partial program approval does not affect, or change in any way, the dates established in the Commonwealth's approved program.

3. Insignificant Emission Units (IEUs)

Under Part 70, EPA may approve as part of a state program a list of insignificant activities and emission levels which need not be included in permit applications. The ACHD has not requested EPA approval of such a list of insignificant activities or emission levels. However, the ACHD's program provides for certain exemptions from the requirement to obtain a permit that should not be confused with IEUs. These exemptions include activities that have been historically exempt from any permitting requirements. For any activity that the ACHD treats as an IEU, a case-by-case determination must be made. Section 2103.10(b)(12) incorporates by reference (IBRs) 25 PA Code section 127.14(a)(8) and (9), and (d) as well as any future changes to these sections. Paragraphs 127.14(a)(8) and (9) allow PADEP to determine if an emission unit is of minor significance on a case-by-case basis. Paragraph 127.14(d) states that, in the future, PADEP may establish a list of sources and physical changes that are of minor significance. Further, the paragraph explains that public notice and a 30-day comment period would be provided prior to adoption of the list. If EPA approves the list as a revision to PADEP's part 70 program, then these units would be considered insignificant emission units in the Commonwealth and the County.

4. EPA 45-Day Review Period

EPA is afforded a 45-day period to review proposed permits and permit modifications for conformity with the Act and part 70 requirements. Section 2103.21(c)(3) does not ensure that EPA will have the opportunity for a 45 day period of pre-issuance review of permits that are revised as a result of the public and affected state's comments. Pursuant to sections 2103.21(c) and (e), the comment periods for EPA and the public and affected state review

comment periods begin simultaneously. Because the public and affected state comment period is only 30 days, it is theoretically possible for the ACHD to modify and issue the proposed permit or permit modification on the basis of comments received. Thus EPA would not have an opportunity to review the permit (which was revised on the basis of comments received) for 45 days prior to its issuance.

Section 2103.21(e) provides that permits will be resubmitted to EPA if any material substantive changes have been made as a result of comments received by the ACHD, but does not guarantee EPA a 45-day review. Provisions defining material substantive changes are included in the Implementation Agreement (IA) to clarify the criteria used to determine which final permits must be provided to EPA for post-issuance review. Further, the IA provides that EPA shall have 45-days from the receipt of the notice of material substantive changes to object to the permit. If a permit has been issued prior to the receipt of an EPA objection, the IA states that the ACHD will revoke the permit within 20 days.

5. Off Permit Changes

The ACHD's use of the term ''Off Permit Change'' differs from EPA's intended use. The ACHD's program limits these changes to de minimis levels in section 2103.14. De minimis changes are covered under operational flexibility changes and are not considered off-permit changes. As written, the ACHD's program does not allow for off permit changes. Furthermore, incorporation of provisions to make off permit changes is optional. (40 CFR 70.4(b)(14))

6. Absence of Part 70 Emergency Defense Provisions

The ACHD has incorporated most of the record keeping and reporting requirements required under part 70 for an emergency to be considered an affirmative defense. However consistent with Pennsylvania's program, the ACHD program does not allow for an emergency to be considered an affirmative defense. EPA clarified, in its August 31, 1995, supplemental part 70 document, that ''the part 70 rule does not require the States to adopt the emergency defense. A State may include such a defense in its part 70 program to the extent it finds appropriate, although it may not adopt an emergency defense less stringent than that set forth at 40 CFR 70.6(g).'' (60 FR 45530—45559). Thus, since the ACHD's adoption of emergency defense provisions under part 70 is discretionary, it is not inconsistent with § 70.6(g).

7. Definition of Affected Unit

The definition of affected unit may seem less inclusive than the definition in 40 CFR 72.2 because ACHD's definition is limited to fossil fuel-fired sources. At this time, only sources which run on fossil fuels are included under the Title IV acid rain requirements. Therefore, the definition is essentially equivalent.

8. Title V Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its Title V operating permits program. Each Title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from Title V sources meet or exceed $25 per ton of emission per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum'' (§ 70.9(b)(2)(i)).

PADEP's approved fee schedule, under section 127.705 of the their regulations, requires all Title V facilities in the Commonwealth to pay an annual Title V emission fee of $37 per ton for each ton of a regulated pollutant actually emitted from the facility. This amount exceeds the $25 per ton presumptive minimum. Section 127.705 also includes a provision that ties the amount of the fee to the CPI as required by 40 CFR 70.9(b)(2)(iv). The $37 per ton amount was derived by dividing the total annual estimated Title V operating permit program cost by the total annual number of billable tons of emissions. PADEP used actual operating hours and production rates, and considered in-place control equipment and the types of materials processed, stored, or combusted in calculating the total actual billable tons figure. EPA determined, in its approval of PADEP's Title V program, that these fees will result in collection and retention of revenues sufficient to cover the Title V operating permit program costs statewide. ACHD's fee requirements as outlined in section 2103.41 are consistent with PADEP's regulations and are therefore consistent with EPA's prior approval of the statewide fee demonstration. Furthermore, 25 PA Code 127.706 states that PADEP may provide financial assistance to the ACHD on an annual basis as necessary to assist implementation of the Title V program.

FESOP Program Background

Major stationary sources in Allegheny County wishing to avoid the requirement to apply for and receive a Title V permit must obtain a FESOP. Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in various portions of the Act. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. In situations where unrestricted operation of a source would result in a PTE above major source levels, a source may legally avoid program requirements by accepting federally enforceable permit conditions which limit emissions to levels below the applicable major source thresholds. As a result, the source becomes what is commonly referred to as a ''synthetic minor'' source. Federally enforceable permit conditions, if violated, are subject to enforcement by EPA and by citizens in addition to the state or local agency.

On June 28, 1989, EPA published guidance on the basic requirements for EPA approval of (non-Title V) FESOP programs. See 54 FR 27274. Permits issued pursuant to such programs may be used to establish federally enforceable limits on a source's potential emissions to create ''synthetic minor'' sources. In short, the criteria require state programs to:

(a) be approved into the SIP,

(b) impose legal obligations to conform to the permit limitations,

(c) provide for limits that are enforceable as a practical matter,

(d) issue permits through a process that provides for review and an opportunity for comment by the public and by EPA, and

(e) ensure that there will be no relaxation of otherwise applicable federal requirements.

The Federal Court of Appeals for the District of Columbia Circuit vacated the definition of PTE as it pertains to both the new source review rules and the federal operating permit rules, 40 CFR parts 51, 52, and 70. See, *Chemical Manufacturers Association* v. *EPA,* No. 89–1514 (Sept. 15, 1995) and Clean Air Implementation Project, et al v. Browner, Civ. No. 92–1303 (June 28, 1996). Therefore, EPA also recognizes PTE limits established by state and local permitting authorities as being enforceable if the above criteria (b) through (e) are met. However, future

rulemaking action may require that PTE limits be federally enforceable.

As part of this action, EPA is also proposing to approve the ACHD's FESOP program pursuant to section 112(l) of the Act for the purpose of allowing the ACHD to issue operating permits which limit source's PTE hazardous air pollutants (HAPs). Section 112(l) of the Act provides the underlying authority for controlling emissions of HAPs. Therefore, in order to extend federal enforceability of the ACHD's FESOP to include HAPs, EPA today proposes to approve the ACHD's permit program pursuant to section 112(l) of the Act.

Discussion of FESOP Program Submittal

Subparts B and C—1 (sections 2102 and 2103.1x) of the submittal include the requirements for the FESOP program. These subparts also contain the ACHD's installation (or preconstruction) and operating permit program. The proposed revision generally strengthens the SIP by establishing a comprehensive installation and operating permit program and by making this program consistent with the Title V operating permit regulations codified in subpart C—2 (section 2103.2x).

On June 28, 1989, EPA amended the definition of ''federally enforceable'' to clarify that terms and conditions contained in state-issued operating permits are federally enforceable for purposes of limiting a source's PTE, provided that the state's operating permits program is approved into the SIP under section 110 of the Act as meeting certain conditions, and provided that the permit conforms to the requirements of the approved program. The conditions for EPA approval discussed in the June 28, 1989 notice establish five criteria for approving a state operating permit program. See 54 FR 27274-27286. The following section describes each of the criteria for approval of a state's program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and how the ACHD's SIP submittal satisfies those criteria.

1. The State's Operating Permit Program (i.e., the Regulations or Other Administrative Framework Describing how Such Permits are Issued) Must be Submitted to and Approved by EPA as a SIP Revision.

The Commonwealth of Pennsylvania submitted the ACHD's revisions of Article XXI to EPA for approval as a revision of its SIP on November 5, 1998. EPA is proposing to approve the ACHD's regulation (subparts B and C.1 of Article XXI) as a program that meets the criteria for establishing PTE limits. Thus, EPA will recognize a source's limits on PTE for avoiding major source applicability, so long as the individual installation or operating permit issued under the approved program meets those same requirements.

2. The SIP Revision Must Impose a Legal Obligation That Operating Permit Holders Adhere to the Terms and Limitations of Such Permits (or Subsequent Revisions of the Permit Made in Accordance With the Approved Operating Permit Program) and Provide That Permits Which do not Conform to the Operating Permit Program Requirements and the Requirements of EPA's Underlying Regulations may be Deemed not ''Federally Enforceable'' by EPA.

Article XXI, section 2103.12.f.1 requires that all permits issued (major and minor) shall include provisions that the permittee must comply with at all times. Any permit noncompliance constitutes a violation of Article XXI, the Pennsylvania Air Pollution Control Act, and the Act, and is grounds for any and all enforcement actions. Additionally, section 2103.10.c.3 makes it a violation for any person to fail to comply with any term or condition of any permit.

3. The State Operating Permit Program Must Require That all Emission Limitations, Controls, and Other Requirements Imposed by Such Permits Will be at Least as Stringent as any Applicable Limitations and Requirements Contained in the SIP, or Enforceable Under the SIP, and that the Program may not Issue Permits that Waive, or Make less Stringent, any Limitations or Requirements Contained in or Issued Pursuant to the SIP, or that are Otherwise ''Federally Enforceable'' (e.g. Standards Established Under Sections 111 and 112 of the Clean Air Act).

Article XXI, section 2103.12.a.C states that the conditions of the permit must provide for and require compliance with all applicable requirements. Section 2103.12.g states that all permits shall include standard emission limit requirements, and specify the origin and authority for each limitation. Additionally, if an alternative emission limit is provided, section 2103.12.g(2) requires that it must be demonstrated to be equivalent to or more stringent than the applicable limit, and it must be quantifiable, enforceable, and based on replicable procedures.

4. The Limitations, Controls, and Requirements of the State's Operating Permits Must be Permanent, Quantifiable, and Otherwise Enforceable as a Practical Matter.

Article XXI, section 2103.12.g states that along with required emission limits and standards, the permit must include those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. For each emission rate and standard in a permit, associated conditions will be included which establish a method to determine compliance, including appropriate testing, monitoring, recordkeeping, and reporting. Section 2103.12.h.1 establishes broad authority to require the appropriate testing, monitoring, recordkeeping, and reporting. EPA understands that ACHD drafts all permits to be consistent with underlying local, state, and federal rules and incorporates monthly or more frequent short term emission limits.

5. The Permits are Issued Subject to Public Participation. This Means that the state Agrees, as Part of its Program, to Provide EPA and the Public with Timely Notice of the Proposal and Issuance of Such Permits, and to Provide EPA, on a Timely Basis, With a Copy of Each Proposed (or Draft) and Final Permit Intended to be Federally Enforceable. This Process must also Provide for an Opportunity for Public Comment on the Permit Applications Prior to the Issuance of the Final Permit.

Article XXI, sections 2102.05.c and 2103.11.e provide for public notice and participation in the issuance, modifications, and renewals of permits. Section 2102.04.h specifically lists the public notice and participation procedures for synthetic minor permits. Section 2103.11.h incorporates by reference the public notice requirements from 25 PA Code 127.424, 424 and 43. Article XXI, subchapters B and C provide thorough procedures for public participation which meet the public participation requirements.

Definitions: EPA is also, in this rulemaking action, incorporating by reference definitions that may be relied upon in issuing installation and operating permits. Certain definitions such as ''actual emissions'' and ''maximum achievable control technology (MACT)'' are not consistent with and are less stringent then 40 CFR 51.165. In such cases where the definition is not essential to this rulemaking or this FESOP SIP revision, it will be addressed in a future rulemaking action.

The following definitions are consistent with the requirements for a FESOP program and part 70 program approval. These definitions are proposed to be incorporated into the SIP for purposes of the FESOP program approval and included in the part 70 program: emissions allowable under the permit, major modification, major source, maximum achievable control technology, and PTE. Please refer to the technical support document for a more detailed analysis.

Limiting HAP Emissions Through FESOP: As part of this action EPA proposes to approve, pursuant to section 112(l) of the Clean Air Act, the ACHD's request for authority to regulate HAPs through the issuance of a FESOP. This would grant the ACHD authority to issue permits which limit PTE of HAPs. EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice referenced above, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989 document does not address HAPs because it was written prior to the 1990 amendments to section 112 of the Act.

In addition to meeting the criteria discussed above, the ACHD's permit program for limiting PTE of HAPs must meet the statutory criteria for approval under section 112(l)(5) of the Act. This section allows EPA to approve a program only if it:

(a) contains adequate authority to assure compliance with any section 112 standard or requirement;

(b) provides for adequate resources;

(c) provides for an expeditious schedule for assuring compliance with section 112 requirements; and

(d) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting the PTE of HAPs through amendments to subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. See 58 FR 62262 (November 26, 1993). Given the severe timing problems posed by impending deadlines set forth in MACT emission standards under section 112 and for issuing Title V permits, the EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit PTE prior to promulgation of a rule specifically addressing this issue. EPA's conclusions are discussed in the technical support document and will not be repeated here. EPA is proposing approval of the ACHD's FESOP now so that they may begin to issue federally enforceable installation and operating permits limiting PTE as soon as possible.

Provisions Implementing Other Titles of the Act for Part 70 Sources

1. *Section 112:* The guidance memorandum entitled ''Title V Program Approval Criteria for section 112 Activities,'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards of April 13, 1993 discusses the legal authority needed to implement and enforce section 112 requirements through the Title V permit as well as resource adequacy. The ACHD's program contains this legal authority in its enabling legislation (the Pennsylvania Air Pollution Control Act, Local Health Administration Law, Second Class County Code, The County Local Agency Law, and Article XI, Rules and Regulations of the ACHD) and in regulatory provisions defining applicable requirements. The ACHD's submittal also contained the Allegheny County Solicitor's Opinion stating the ACHD has the legal authority to incorporate all applicable requirements into its operating permits. The submittal also contained a demonstration of adequate resources. Therefore the ACHD has sufficient legal authority and resources to issue permits that assure compliance with all section 112 requirements and to carry out all section 112 activities, including those required under section 112(g).

2. *Program for Straight Delegation of Section 112 Standards:* The requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the provisions of 40 CFR part 63 standards promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the permitting authority's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval, under section 112(l)(5) and 40 CFR 63.91, of the state's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated.

3. *Program for Implementing Title IV of the Act:* The ACHD's program IBRs 40 CFR parts 72 through 78, which contain the Federal acid rain requirements. The program contains adequate authority to issue permits which reflect the requirements of Title IV of the Act.

Proposed Action

EPA is proposing full approval of a Title V Operating Permits Program for Allegheny County, as submitted by Pennsylvania on November 5, 1998. The ACHD has demonstrated that the program will be adequate to meet the minimum elements of a partial operating permits program as specified in 40 CFR part 70. The scope of the ACHD's program that EPA proposes to approve in this notice would apply to all Title V facilities (as defined in the approved program) within the County. EPA is also proposing approval of the ACHD's FESOP program submitted on November 5, 1998 as a SIP revisions under section 110 of the Act. EPA has determined that the program fully meets the requirements of EPA's June 28, 1989 criteria for FESOP programs. This approval recognizes ACHD's FESOP program as capable of establishing federally enforceable limitations on criteria pollutants and hazardous air pollutants. Further, such actions will confer federal enforceability status to permits issued pursuant to ACHD's part C Operating Permit Program prior to EPA's final action so long as the requirements for federal enforceability have been met. Finally, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the ACHD's mechanism for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. EPA also proposes to approve, pursuant to section 112(l) of the Clean Air Act, the ACHD's request for authority to regulate HAPs through the issuance of federally enforceable state installation and operating permits.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental

Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will 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), because it merely approves 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.'' Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action for the ACHD's two permitting programs does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 29, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–31542 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Parts 919 and 952

RIN: 1991–AB45

Acquisition Regulations: Mentor-Protege Program

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its acquisition regulations to formally encourage DOE prime contractors to assist small disadvantaged firms certified by the Small Business Administration under Section 8(a) of the Small Business Act, other small disadvantaged businesses, Historically Black Colleges and Universities and other minority institutions of higher learning, and women-owned small businesses in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies. The program seeks to foster long-term business relationships between DOE prime contractors and these small business entities and minority institutions of higher learning and to increase the overall number of these small business entities and minority institutions that receive DOE contract and subcontract awards.

DATES: Written comments on the proposed rulemaking must be received on or before January 5, 2000.

ADDRESSES: Comments (3 copies) should be addressed to, Eugene Tates at U.S. Department of Energy, Attn. Mentor-Protege Rulemaking, Office of Small and Disadvantaged Business Utilization, 1000 Independence Avenue, SW, Washington, DC 20585.

With respect to proposed reporting requirements and the Paperwork Reduction Act, comments should be addressed to Eugene Tates and to Erik Godwin, Office of Information and Regulatory Affairs, NEOB-Rm. 10202, 725 17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Eugene Tates, Mentor-Protege Program, U.S. Department of Energy, Office of Small and Disadvantaged Business Utilization, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4556; or Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background

On June 9, 1995 (60 FR 30529), DOE published final guidelines for its Mentor-Protege Pilot Initiative. The purpose of the Initiative was to develop a program that encouraged DOE prime contractors to help energy-related small disadvantaged, 8(a), and women-owned small businesses in enhancing their business and technical capabilities to ensure full participation in the mission of DOE. In addition, the Initiative sought to foster the establishment of long term business relationships between these small business entities and DOE prime contractors and to increase the overall number of these small business entities eligible to receive DOE contract and subcontract awards.

In order to achieve the goal of the Initiative, DOE prime contractors entered into formal agreements with qualified small businesses to provide developmental assistance. In many cases, this assistance has enabled small businesses to benefit from the vast wealth of knowledge acquired by large, successful firms doing business with DOE.

The success of the DOE business mentoring relationships and the continuing need to develop small disadvantaged business, 8(a) firms and women-owned small businesses capabilities to perform contracts and subcontracts for DOE has led to the determination to create a permanent DOE Mentor-Protege Program. The Program will have the same goals and objectives as the DOE Mentor-Protege Pilot Initiative. Some refinements have been added to provide additional incentives for prime contractor participation in the Mentor-Protege Program.

II. Section-by-Section Analysis

This rulemaking proposes to add a new Subpart 919.70 and amend Part 952 of the DEAR to provide a Mentor-Protege Program that assists qualified small businesses to receive developmental assistance from DOE prime contractors in order to increase the base of small businesses eligible to perform DOE contracts and subcontracts.

Proposed section 919.7002 defines which types of entities are eligible to participate as Protege in the Program. Those entities would include Historically Black Colleges and Universities and other minority institutions of higher learning in addition to 8(a) firms, other small disadvantaged businesses, and women-owned small businesses. Proposed section 919.7003 provides the DOE's Mentor-Protege Program policy. It also states that developmental assistance is reimbursable to the Mentor under DOE cost reimbursement contracts only to the extent that the costs are otherwise allowable in the performance of identified DOE contracts. This is an exception to the general rule that DOE will not reimburse Mentors for providing developmental assistance to Protege, which is set out in proposed section 919.7004. Proposed section 919.7005 outlines requirements for Mentor eligibility.

Proposed section 919.7006 states the incentives for mentoring firms under cost-plus award fee contracts. Proposed section 919.7007 outlines Protege eligibility requirements. Proposed section 919.7008 provides that selection of a protege is solely at the discretion of the proposed mentor. Section 919.7009 describes the process by which DOE contractors may seek to participate in this program as Mentors.

Proposed section 919.7010 provides the minimum requirements of a proposed Mentor-Protege agreement. Proposed section 919.7011 describes forms of developmental assistance.

Proposed section 919.7012 describes the review process leading to the DOE's approval of a proposed Mentor-Protege agreement. Proposed section 919.7013 describes the various reports that this program requires. Proposed section 919.7014 provides for the inclusion of a provision discussing the Mentor-Protege program in all solicitations with an estimated value in excess of the simplified acquisition threshold. Proposed section 952.219–XX provides for the inclusion of a provision discussing the establishment of the Mentor-Protege Program.

III. Procedural Requirements

A. Review Under Executive Order 12866.

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and

Review,'' (58 FR 51735, October 4, 1993). Accordingly, this proposed rule was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) Write regulations to minimize litigation and (3) Provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the subject law's preemptive effect, if any, (2) Clearly specifies any effect on existing Federal law or regulation; (3) Provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) Specifies the retroactive effect, if any; (5) Adequately defines key terms; and (6) Addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that these proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. The entities to which this rulemaking would apply are large business and small business firms that receive a form of incentive for assuming the role of mentor to 8(a) firms, other small disadvantaged businesses, small women-owned businesses, Historically Black Universities and Colleges, and other minority institutions of higher learning. It is the expectation that at such time as this rule is finalized, those protege entities would directly benefit from the forms of mentoring described in this proposed rule. There would not be an adverse economic impact on contractors or subcontractors. Accordingly, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This proposed rule would require DOE contractors serving as mentors to submit semi-annual progress reports to the DOE Mentor-Protege Program Manager at DOE Headquarters (see proposed § 919.7013). The information in the progress reports is necessary to determine if the schedules and developmental assistance levels contained in Mentor-Protege Agreements are being met. Performance under the Agreements is the basis for awarding incentive fees to mentor firms. This proposed collection of information has been submitted to the Office of Management and Budget for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* DOE estimates the number of respondent mentor firms to be 30 and the number of hours required for recordkeeping and preparation of the reports to be approximately 12 hours per respondent annually. The total annual burden hour from compliance is expected to be 360 hours (30×12 hours per year). The collection of information contained in this proposed rule is considered the least burdensome for meeting the requirements and objectives of the DOE Mentor-Protege Program.

DOE invites public comments concerning: (1) the need for the reporting requirement; (2) the accuracy of DOE's estimate of the reporting burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents. Send comments regarding this proposed collection of information to the contact persons named in the address section of this notice.

E. Review Under the National Environmental Policy Act

DOE has concluded that this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule merely describes a DOE Mentor-Protege program. States would not be directly subject to this rule, since they are not among the class of entities described as mentors or proteges. DOE has determined that this proposed rule would not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to State, local or tribal governments, or to the private sector of $100 million or more. This proposed rulemaking would only affect private sector entities, and the impact is less than $100 million.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriation, 1999 (Public Law 105–277) requires Federal Agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE concluded that it is

not necessary to prepare a Family Policymaking Assessment.

IV. Opportunity for Public Comment

At the beginning of this notice, DOE provided for a 30-day comment period and set forth the address for submitting written comments. DOE is not scheduling a public hearing because there are no significant issues of fact or law that would warrant such a hearing.

List of Subjects in 48 CFR Parts 919 and 952

Government procurement.

Issued in Washington, D.C. on November 29, 1999.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 919—SMALL BUSINESS PROGRAMS

1. The authority citation for Part 919 is revised to read as follows:

Authority: 42 U.S.C. 7254, 40 U.S.C. 486 (c), 42 U.S.C. 2201.

2. A new subpart 919.70 is added as follows:

Subpart 919.70—The Department of Energy Mentor-Protege Program

Sec.

Subpart 919.70—The Department of Energy Mentor-Protege Program

919.7001 Scope of subpart.

The Department of Energy (DOE) Mentor-Protege Program is designed to encourage DOE prime contractors to assist small disadvantaged firms certified by the Small Business Administration (SBA) under Section 8(a) of the Small Business Act, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities, and other minority institutions of higher learning in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies. The program seeks to foster long-term business relationships between these small business entities and DOE prime contractors, and to increase the overall number of these small business entities that receive DOE contract and subcontract awards.

919.7002 Definitions.

Historically Black Colleges and Universities (HBCUs), as used in this subpart, means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Other Minority Institutions of Higher Learning, as used in this subpart, means an institution determined by the Secretary of Education to meet the requirements of 20 U.S.C. 1067k.

Small Disadvantaged Business Concern, as used in this subpart, means a small business concern owned and controlled by socially and economically disadvantaged individuals that meets the requirements of 13 CFR part 124, subpart B.

Women-Owned Small Business, as used in this subpart, means a small business concern that meets the requirements of 15 U.S.C. 637(d)(3)(D).

919.7003 General policy.

(a) DOE contractors eligible under 48 CFR 919.7005 may enter into agreements with businesses certified by the SBA in the 8(a) Program, other Small Disadvantaged Businesses, Women-Owned Small Businesses, HBCUs, and other Minority Institutions of higher learning to provide those firms appropriate developmental assistance to enhance the capabilities of Proteges.

(b) Costs incurred by a Mentor to provide developmental assistance, as described in section 919.7011, are allowable only to the extent that they are incurred in performance of a contract identified in the Mentor-Protege Agreement and are otherwise allowable in accordance with the cost principles applicable to that contract.

(c) Headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) is the DOE Program Manager for the Mentor-Protege Program.

919.7004 General prohibitions.

DOE may not reimburse the costs of a Mentor in providing any form of developmental assistance to a Protege except as provided in Section 919.7003(b).

919.7005 Eligibility acceptance to be a Mentor firm.

To be eligible for recognition by DOE as a Mentor, an entity must be a DOE contractor performing contracts with at least one negotiated subcontracting plan as required by FAR 19.7.

919.7006 Incentives for DOE contractor participation

(a) Under cost-plus-award fee contracts, approved Mentor firms may earn award fees associated with their performance as a Mentor. The award fee plan may include provision for the evaluation of the contractor's utilization of 8(a) firms, other small disadvantaged businesses, women-owned small businesses, HBCUs, and other minority institutions of higher learning. DOE may evaluate the Mentor's performance in the DOE Mentor-Protege Program under any Mentor-Protege Agreement(s) as a separate element of the award fee plan.

(b) Mentor firms shall receive credit for subcontracts awarded pursuant to their Mentor-Protege Agreements toward subcontracting goals contained in their subcontracting plan.

919.7007 Eligibility to be a Protege firm.

(a) To be eligible for selection as a Protege, a firm must:

(1) Be a small business certified under Section 8(a) of the Small Business Act by SBA, other certified small disadvantaged business, a women-owned small business, HBCU, or any other minority institution of higher learning;

(2) Be eligible for receipt of government contracts;

(3) Have been in business for at least two (2) years prior to application for enrollment into the Mentor-Protege Program; and

(4) Be able to certify as a small business according to the Standard Industrial Code for the services or supplies to be provided by the Protege under its subcontract with the Mentor.

(b) A prospective Mentor may rely in good faith on written representations by a prospective Protege that the Protege meets the requirements in paragraph (a) of this section.

919.7008 Selection of Protege firms.

(a) A Mentor firm is solely responsible for selecting one or more Protege entities from firms eligible under 48 CFR 919.7007.

(b) A Mentor may have more than one Protege; however, a Protege may have only one Mentor.

(c) The selection of Protege firms by Mentor firms may not be protested, except as provided in paragraph (d) of this section.

(d) Only protests regarding the small business size status of a firm to be a Protege will be considered and shall be submitted to the DOE Office of Small and Disadvantaged Business Utilization for resolution. When that Office is unable to resolve a protest, it will refer the matter to the Small Business Administration for resolution in accordance with 13 CFR. part 121.

919.7009 Process for participation in the program.

A prospective Mentor firm must submit the following to the DOE Mentor-Protege Program Manager.

(a) A statement that it is eligible, as of the date of application, for the award of Federal contracts;

(b) A statement that it is currently performing at least one contract for DOE;

(c) The DOE contract number, type of contract, period of performance (including options), title of technical program effort, name of DOE Program Manager (including contact information) and the DOE contracting activity; and

(d) An original and two copies of the Mentor-Protege Agreement signed by the chief executive officers of the Mentor and Protege firms.

919.7010 Contents of Mentor-Protege Agreement.

The proposed Mentor-Protege Agreement must contain:

(a) Names, addresses and telephone numbers of Mentor and Protege firms and a point of contact within each firm who will oversee the Agreement;

(b) Requirements for the Mentor firm or the Protege entity to notify the other entity, DOE Headquarters OSDBU, and the contracting officer in writing at least 30 days in advance of the Mentor firm's or the Protege entity's intent to voluntarily terminate or withdraw from the Mentor-Protege Agreement (Such termination would not terminate any existing subcontract between the Mentor and the Protege);

(c) A description of the form of developmental assistance program that will be provided by the Mentor to the Protege firm, including a description of any subcontract work, and a schedule for providing the assistance and the criteria for evaluation of the Protege's developmental success (48 CFR 919.7011);

(d) A listing of the number and types and estimated amount of subcontracts to be awarded to the Protege firm;

(e) Term of the Agreement;

(f) Procedures for completing performance under the Agreement in the case of a termination of, or withdrawal from, the Agreement by either party;

(g) Procedures to be invoked should DOE terminate its recognition of the Agreement for good cause (such termination of DOE recognition would not constitute a termination of the subcontract between the Mentor and the Protege.);

(h) Provision for the Mentor firm to submit to the DOE Mentor-Protege Program Manager a ''lessons learned'' evaluation developed by the Mentor at the conclusion of the contract Mentor-Protege Agreement;

(i) Provision for the submission by the Protege firm of a ''lessons learned'' evaluation to the DOE Mentor-Protege Program Manager at the conclusion of the Mentor-Protege Agreement;

(j) Description of how the development assistance will potentially increase subcontracting opportunities for the Protege firm;

(k) Provision for the Mentor firm to brief the DOE Mentor-Protege Program Manager, the field technical program manager(s), and the contracting officer at the conclusion of each year in the Mentor-Protege Program regarding program accomplishments as pertains to the approved Agreement (where possible, this review may be incorporated into the normal program review for the Mentor's contract);

(l) Recognition that costs incurred by a Mentor to provide developmental assistance, as described in 48 CFR 919.7011, are allowable only to the extent that they are incurred in performance of a contract identified in the Mentor-Protege Agreement and are otherwise allowable in accordance with the cost principles applicable to that contract (the DOE Mentor-Protege Program has no appropriation for paying for developmental assistance); and.

(m) Other terms and conditions, as appropriate.

919.7011 Developmental assistance.

(a) The forms of developmental assistance a Mentor may provide to a Protege include, but are not limited to:

(1) Management guidance relating to:

(i) Financial management;

(ii) Organizational management;

(iii) Overall business management planning;

(iv) Business development;

(v) Marketing assistance;

(2) Engineering and other technical assistance;

(3) Noncompetitive award of subcontracts under DOE or other Federal contracts where otherwise authorized;

(4) Award of subcontracts in the Mentor's commercial activities;

(5) Progress payments based on costs;

(6) Rent-free use of facilities and/or equipment owned or leased by Mentor; and

(7) Temporary assignment of Mentor personnel to the Protege for purposes of training.

(b) Costs incurred by a Mentor to provide developmental assistance, as described in paragraph (a) of this section, are allowable only to the extent provided at 48 CFR 919.7003(b).

919.7012 Review and approval process of agreement by OSDBU.

(a) OSDBU will review the proposed Mentor-Protege Agreement under 48 CFR 919.7010 and will complete its review and assessment no later than 30 days after receipt. OSDBU will provide a copy of its assessment to the cognizant DOE technical program manager and contracting officer for review and concurrence.

(b) If OSDBU approves the Agreement, the Mentor may implement the developmental assistance program.

(c) Upon finding deficiencies that DOE considers correctable, the OSDBU will notify the Mentor and request information to be provided within 30 days that may correct the deficiencies. The Mentor may then provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU and the Agreement either approved or disapproved.

919.7013 Reports.

(a) Prior to performing an evaluation of a Mentor's performance under its Mentor-Protege Agreement for use in award fee evaluations, the Mentor-Protege Program Manager must consult with the cognizant DOE field technical program manager and must provide a copy of the performance evaluation comments regarding the technical effort and Mentor-Protege development to the contracting officer.

(b) The DOE Mentor-Protege Program manager must submit semi-annual reports to the cognizant contracting officer regarding the participating Mentor's performance in the Program for use in the award fee determination process.

(c) The DOE contractor must submit progress reports to the DOE Mentor-Protege Program Manager semi-annually.

919.7014 Solicitation provision.

The contracting officer must insert the provision at 952.219–XX, DOE Mentor-Protege Program, in all solicitations with an estimated value in excess of the simplified acquisition threshold.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for Part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

4. A new subsection 952.219–XX, DOE Mentor-Protege Program is added as follows:

§ 952.219–XX, DOE Mentor-Protege program.

In accordance with 919.7014 insert the following provision in applicable solicitations.

DOE Mentor-Protege Program

(xxx xx)

The Department of Energy has established a Mentor-Protege Program to encourage its prime contractors to assist firms certified under 8(a) of the Small Business Act by SBA, other certified Small Disadvantaged Businesses, Women-Owned Small Businesses, Historically Black Colleges and Universities and Minority Institutions and other Minority Institutions of higher learning in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protege firms will develop and submit ''lessons learned'' evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

[FR Doc. 99–31434 Filed 12–3–99; 8:45 am]

BILLING CODE 6450–01–P

Notices

Federal Register
Vol. 64, No. 233
Monday, December 6, 1999

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

School Breakfast Program: School Breakfast Pilot Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's intention to initiate a School Breakfast Pilot Project that would make available, in a limited number of elementary schools, nutritious breakfasts free to all students regardless of family income. This notice also requests that School Food Authorities (SFAs) wishing to participate in the pilot project submit applications by January 31, 2000. The results of the evaluation of this pilot project will enable the Department to rigorously assess the effects of a universal-free school breakfast program on meal participation and a broad range of student outcomes, including academic achievement, school attendance and tardiness, classroom behavior and attentiveness, and dietary status.

DATES: Applications to participate in this pilot project must be submitted to respective State Child Nutrition Directors on or before January 31, 2000. The Department will conclude its selection of school food authorities to participate in the pilot project by April 1, 2000.

SUPPLEMENTARY INFORMATION: This action 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 the Act. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.555. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Background

The School Breakfast Program (SBP), authorized by the Child Nutrition Act of 1966, started as a pilot program to provide funding for school breakfasts in poor areas and areas where children had to travel a great distance to school. The intent was to provide a nutritious breakfast to children who might otherwise not receive one. The importance of a nutritious breakfast is supported by several studies that appear to have linked it to improved dietary status and enhanced school performance. Most recent research suggests that providing schools breakfasts to low-income children is associated with greater likelihood of eating a substantial breakfast and significant improvements in children's cognitive, emotional, and psychological behavior, as well as in their school attendance and academic achievement.

In response to the growing body of evidence suggesting educational and dietary benefits from school breakfasts, many observers have urged that the availability of school breakfasts be expanded. Despite an increase in the number of schools offering the SBP, the percentage of students eating school breakfasts is considerably lower than the comparable percentage eating school lunch. The disparity in participation rates between breakfast and lunch programs is due, in part, to the timing of the meal, with breakfast typically served prior to the start of school, and lunch provided during school hours. Those eating school breakfasts are significantly more likely than typical school students to be poor, and to qualify for free or reduced-price breakfasts. It is possible that there is reduced participation in the SBP in part due to students' perceived stigma associated with the use of free and reduced-price school meals. One approach to increasing participation in the SBP is to offer breakfast free to all students, regardless of their ability to pay for meals. This would remove the perceived stigma often associated with school breakfast, and result in more children (both poor and non-poor) participating. It is believed that a universal-free program would result in more children consuming a nutritious breakfast and beginning the school day ready to learn.

However, expanding the SBP so that breakfasts are free to all students could substantially increase the cost to the federal government of subsidizing school breakfasts, should participation increase, as proponents of universal-free breakfast believe. In a climate where public resources are constrained, it is critical to know whether these expenditures are worthwhile. Does the increase in participation in the SBP result in improved dietary intake, academic performance, and related classroom behaviors? Would these free breakfasts simply substitute for meals that students—particularly students from nonpoor households—would otherwise eat in the absence of the universal-free breakfast program?

Within this context, Congress enacted Section 109 of the William F. Goodling Child Nutrition Act of 1998 (Pub. L. 105–336), which amended Section 18 of the National School Lunch Act, 42 U.S.C. 1769(e), to authorize the Secretary of Agriculture, through the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), to conduct a pilot study that provides free school breakfasts to all students regardless of family income. The evaluation of the results obtained from the pilot study will rigorously assess the effects of this universal-free school breakfast program on program participation and a broad range of student outcomes, including academic achievement, school attendance and tardiness, classroom behavior and attentiveness, and dietary status.

Solicitation of Requests To Participate

The Department is issuing this notice to solicit requests from school food authorities (SFAs) wishing to participate in this pilot project. The Department envisions this project as a three-year pilot and anticipates admitting a limited number of SFAs into the pilot project. To ensure as broad a base as possible, the Department intends that the pool of selected school districts will be diverse in terms of size, geographic location, and economic conditions. Availability

of school district records including attendance and student achievement records may enter into the selection process. Participation in USDA's School Breakfast Program is a necessary prerequisite to participate in the demonstration. Selected school districts will be expected to implement a universal-free school breakfast program in a limited number of elementary schools while maintaining the regular school breakfast program in the remaining elementary schools.

Submission of Requests to Participate

SFAs wishing to participate in this pilot project should request an information packet and application by contacting Alberta C. Frost, Director, Office of Analysis, Nutrition and Evaluation, 3101 Park Center Drive, Room 503, Alexandria, VA 22302, (703) 305–2017. SFAs may also download the information package and application from the USDA/FNS Internet website at http://www.fns.usda.gov. This packet will include information about the pilot project and instructions for completing and submitting applications. The information will include the criteria the Department will use in its evaluation of applicants. Applications must be submitted in writing to respective State Child Nutrition Directors not later than January 31, 2000. State Child Nutrition Directors will review applications and forward recommendations and all applications to the Office of Analysis and Evaluation, Food and Nutrition Service by February 15, 2000 for further consideration. The Department will select SFAs by April 1, 2000 and will work with these sites to implement the pilot project during the fall/winter of School Year 2000/01.

Dated: November 26, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–31457 Filed 12–3–99; 8:45 am]

BILLING CODE 3410–3–0–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 6/17/99–11/29/99

Firm Name	Address	Date Petition Accepted	Product
Clarksburg Casket Company	Clarksburg Post Office, Clarksburg, WV 26302.	06/17/99	Hardwood caskets.
Sound Seafood Corporation of Alaska	Olympic Circle, Girdwood, AK 99587.	06/18/99	Salmon fillets.
Stelray Plastic Products, Inc.	151 Wakelee Avenue, Ansonia, CT.	06/21/99	Injection molded plastic parts for electric shavers.
Ioline Corporation	14140 NE 200th St., Woodinville, WA 98072.	06/25/99	Vinyl sign cutters, textile marker plotters and applique sewn material cutters
Diebel Manufacturing Co.	6505 Oakton Street, Morton Grove, IL 60053.	06/25/99	Custom precision metal stamped products.
Eastern Manufacturing Corporation	2 Industrial Way, Amesbury, MA 01913.	06/25/99	Printed circuit boards.
Franklin Instrument Co. Inc.	Railroad Drive, Warminster, PA 18974.	06/25/99	Battery operated and AC clocks.
Emkay Chemical Company, Inc	319–325m Second St., Elizabeth, NJ 07206.	06/28/99	Industrial organic textile chemical auxiliaries, soaps, detergents and cleaners.
Crary Company	237 12th Street, NW, West Fargo, ND 58078.	06/30/99	Parts for mowers, harvesting machines and threshing machines.
National Laser Company	175 West 2950 South, Salt Lake City, UT 84115.	06/30/99	Lasers for use in medical dental, printing and microchip industries.
Stride, Inc.	1021 Carlisle Blvd., SE, Albuquerque, NM 87125.	06/30/99	Ball point pens, felt-tips, markers and parts.
Detroit Electro-Coatings Company, LLC	2599 22nd Street, Detroit, MI 48216.	06/30/99	Automotive parts i.e., fenders, bumpers, sunroofs, and pans.
Michigan Ladder Co., Inc	P.O. Box 981307, Ypsilanti, MI 48189.	06/30/99	Wooden ladders.
Tyler Machinery Company, Inc	610 S. Detroit Street, Warsaw, IN 47580.	06/30/99	Industrial woodcutting machines.
Mission Tool & Manufacturing, Company, Inc	3440 Arden Road, Hayward, CA 94545.	11/29/99	Precision machined and metal stamped parts for the computer, construction, aerospace and automotive industries.
National-Arnold Magnetics	17030 Muskrat Avenue, Adelanto, CA 92301.	11/29/99	Tape wound magnetics: transducers and transmitters.
Waverly Textiles Processing, Inc	8401 Fort Darling Rd., Chesterfield, VA 23237.	11/29/99	Textile printer of sleepwear, underwear, dressing gowns and similar articles of cotton.
Houston Gear USA, Inc	12810 Mula Lane, Stafford, Texas 77477.	11/29/99	Gears.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 6/17/99–11/29/99—Continued

Firm Name	Address	Date Petition Accepted	Product
Piece Dye Acquisition Corporation	125 Dye Plant Road, Edenton, NC 27932.	11/29/99	Dye/finishing of woven fabric of synthetic filament yarns.
Ricon Resins, Inc	569 24½ Road, Grand Junction, CO 81505.	11/29/99	Polybutadiene resins.
Front Range Investors XX, Inc., d.b.a. Front Range Plating.	6155 W. 54th Avenue, Arvada, CO 8002.	11/29/99	Metal parts finisher for airbags.
Innovative Assemblers, Inc	15000 Bellaire Blvd., Houston, TX 77083.	11/29/99	Printed circuit boards.
Tru-Lite, Inc	101 North 4th Street, W. Monroe, LA 71291.	11/29/99	Florescent lighting fixtures.
Pasta U.S.A., Inc	3405 E. Bismark Court, Spokane, WA 99207.	11/29/99	Dry Pasta and prepackaged Pasta and cheese dinners.
Maryland Specialty Wire, Inc.	100 Cockeysville Road, Cockeysville, MD 21030.	11/29/99	Finished wire.
Gooden Holdings, Inc	418 North Main, Kingfisher, OK 73750.	11/29/99	Plastic household accessories, including decorative boxes and picture frames.
Kuepper Favor Company, Inc	206 North Cass Street, Peru, IN 46970.	11/29/99	Party hats and favors.
Architectural Pottery of Louisiana, Inc	1445 Main Street, Baton Rouge, LA 70802.	11/29/99	Large ceramic pottery, including urns and vases
Russell Williams, Ltd	1710 Midway Road, Odenton, MD 21113.	11/29/99	Custom display units made of wood, metal, glass and acrylic.
Silver Lake Cookie Company, Inc	141 Freeman Avenue, Islip, NY 11751.	11/29/99	Specialty cookies and other baked products.
Carolina Glove Co., Inc	116 McLin Road, Conover, NC 28613.	11/29/99	Knitted and other work gloves.
Haas Wood & Ivory, Works, Inc	64 Clementina, San Francisco, CA 94105.	11/29/99	Redwood, oak, maple and poplar wood turnings.
J.E. Myles, Inc	310 Execuitive Drive, Troy, MI 48083.	11/29/99	Mental fatigue testing machines.
McDermott Cue, Manufacturing, Inc	W146 N9560 Held Drive, Menomnee Falls, WI 53051.	11/29/99	Pool cues, golf putters, martial arts accessories, billiard accessories and game tables.
Hollowcast, Inc	717 Sip Street, Union City, NJ 07087.	11/29/99	Tools and dies to cast and machine aluminum & zinc alloys.
Maid Bess Corporation	5115 Bernard Drive, Roanoke, VA 24018.	11/29/99	Men's and women's pants and shirts for the medical and fast food industry.
Inland Equipment Co., Inc,	1055 Higgs Road, Lewisburg, TN 37091.	11/29/99	Clutch parts (collars) for automobiles.
L & P Machine, Inc	1340 Norman Avenue, Santa Clara, CA 95954.	11/29/99	Precision machined and stamped parts for semiconductor manufacturing equipment, body and engine parts for aircraft.
Precise Metal Products, Company, Inc	3830 North 39th Ave., Phoenix, AZ 85019.	11/29/99	Precision machined parts for aircraft, auxiliary power equipment for aircraft support, medical and computer industries.
TMP Technologies, Inc.	1200 Northland Ave., Buffalo, NY 14215.	11/29/99	Polyurethane foam pads and rollers used as shoe polish applicators, feeder rollers and surgical preparation swabs.
Weitek Electronics, Corporation	1104 McConville Road, Lynchburg, VA 24506.	11/29/99	Printed circuit boards.
Abbott Associates, Inc	620 West Street, Milford, CT 06460.	11/29/99	Plastic pouches and plastic lids for packaging of medical appliances.
Tiger Enterprises, Inc, d.b.a., Kenmar Products	379 Summer Street, Plantsville, CT 06479.	11/29/99	Metal working tools used in die sets for punching, stamping and forming metal, gardening and electronic equipment).
Marvec Manufacturing, Inc	115 Sixth Street, Upland, PA 19015.	11/29/99	Hex keys.
Kaydon Ring & Seal, Inc	1600 Wicomico Street, Baltimore, MD 21230.	11/29/99	Rings and seals for railroad diesel and aircraft engines.
Exothermic Molding, Inc	50 Lafayette Place, Kenilworth, NJ 07033.	11/29/99	Reaction injection molding—enclosures for medical equipment (optical devices, medical carts, electronic equipment).

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 6/17/99–11/29/99—Continued

Firm Name	Address	Date Petition Accepted	Product
Hollydays, Inc	Rt. 2, Box 70–21, Lake Providence, LA 71254.	11/29/99	Girls dresses.
SGM Corporation d.b.a. V–J Electronic Assemblies	10899 Kinghurst Houston, TX 77099.	11/29/99	Printed circuit boards.
Suncook Trim Corporation	P.O. Box 234, Suncook, NH 03275.	11/29/99	Woven garment labels and tags.
Control Power-Reliance, LLC	310 Executive Drive, Troy, MI 48083.	11/29/99	Metal vibration machines that detect the stress of a product.
Knotts Company, Inc	400 Industrial Blvd., New Albany, IN 47150.	11/29/99	Steel axle plates and roll cages for material handling equipment.
Excell Manufacturing Co., Inc.	70 Royal Little Drive, Providence, RI 02904.	11/29/99	Gold, platinum or sterling silver chains, earrings, and pendants.
Penn Machine, Inc	8513 SW 2nd Street, Oklahoma City, OK 73128.	11/29/99	Heads and bases for pumps.
Energy Meter Systems, Inc	South Highway 81, Hennessey, OK 73742.	11/29/99	Gas meters.
C W Industries	130 James Way, Southhampton, PA 18966.	11/29/99	Printed circuit boards, resistors and switches.
Susquehanna Steel LLC	1360 West 9th Street, Cleveland, OH 44113.	11/29/99	Reinforced steel bars.
One Way Industries, Inc	845 E. Mandoline Ave., Madison Hts., MI 48071.	11/29/99	Industrial molds, plastic foot/ankle support shoe soles.
Frehold Display Industries, Inc	4517 Chennault Beach Rd., Mukilteo, WA 98275.	11/29/99	Fabric-covered jewelry display fixtures.
Capital Mercury Apparel, Ltd	1372 Broadway, New York, NY 10018.	11/29/99	Men's shirts and sweaters.
Weber's Case Company	19920 Edwards Rd. E., Sumner, WA 98390.	11/29/99	Musical instrument cases.
S. Goldberg & Co., Inc	20 East Broadway, Hackensack, NJ 07601.	11/29/99	Men's, women's, and children's slippers.
Carbide Energy Corporation	5261 Swanson Road, Roscoe, IL 61073.	11/29/99	Metal Carbide cutting tools.
Bestweld, Ind	1210 Stanbridge Street, Norristown, PA 19401.	11/29/99	Pipe fittings from wrought pipe, tube, sheet or plate steel.
Hamlin Trim Separating Company, Inc	6 North Robbins Street, Thomasville, NC 27360.	11/29/99	Collars for shirts and blouses.
Laystrom Manufacturing Co	3900 West Palmer St., Chicago, IL 60647.	11/29/99	Stamped metal shielding for printed circuit boards.
Goldman-Kolber, Inc	185 Dean Street, Norwood, MA 02062.	11/29/99	Jeweled (stones and pearls) and non-jeweled gold bracelets, necklaces, rings and pendants.
McRae & Sons, Inc	8140 Bewley Street, Bay City, Oregon 97107.	11/29/99	Paint brush, saw blade and other wood scrap and board lumber products.
Roca Precision Manufacturing, Inc	12830 Century Drive, Stafford, TX 77477.	11/29/99	Printed circuit boards.
Tonkawa Foundry, Inc	510 South 7th Street, Tonkawa, OK 74653.	11/29/99	Submersible pump parts.
Oregon Glove Company, Inc	1490 12th Street, SE, Salem, OR 97302.	11/29/99	Lined and unlined gloves of various skins.
Laser Design, Inc	9401 James Avenue S., Minneapolis, MN 55431.	11/29/99	Inspection equipment consisting of a laser, precise frame and table surface, data storage and manipulation computer, and specialized software.
Cranston Casting Co., Inc	4 Worthington Road, Cranston, RI 02920.	11/29/99	Metal castings for jewelry, hardware and giftware.
Buck Company, Inc	800 High Street, Chestertown, PA 21620.	11/29/99	Ferrous and non-ferrous castings for door hinges.
Mastex Industries, Inc	Cabot and Bigelow St., Holyoke, MA 01040.	11/29/99	Broad woven fabrics of synthetic/ man-made fibers.
Trans Metrics, Inc	5325 Naiman Parkway, Solon, OH 44139.	11/29/99	Transducers for measuring liquid and gas pressure.
Ramseur Inter-Lock Knitting Company, Inc	P.O. Box 337, Ramseur, NC 27316.	11/29/99	Knitted fabrics—cotton, man-made and nylon
National Technologies, Inc	7641 South 10th St., Oak Creek, WI 53154.	11/29/99	Custom precision metal components for hydraulic and internal combustion engines.
Accra Manufacturing Co., Inc	805 South 11th Street, Broken Arrow, OK 74012.	11/29/99	Archery sites, airplane parts and valve parts.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 6/17/99–11/29/99—Continued

Firm Name	Address	Date Petition Accepted	Product
Carolina Nail, Inc.	620 Forum Parkway, Rural Hall, NC 27045.	11/29/99	Specialty and collated nails.
I. G. Gold, Inc	5905 Sovereign Drive, Houston, Texas 77036.	11/29/99	Gold necklaces and chains.
Technical Services for Electronics, Inc	108 5th Avenue NW, Arlington, MN 55307.	11/29/99	Insulated electrical wiring assembled with connectors
Murray Corporation	260 Schilling Circle, Cockeysville, MD 21031.	11/29/99	Clamps used in the automotive, industrial and marine industries.
Pincus Brothers, Inc	Independence Mall East, Philadelphia, PA 191.	11/29/99	Men's and women's tailored clothing, jackets and pants.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 29, 1999.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 99–31480 Filed 12–3–99; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Palestinian Business Advisory Group: Membership

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of membership opportunity.

SUMMARY: In February 1999, the U.S.-Palestinian Bilateral Committee agreed to establish the United States-Palestinian Business Advisory Group. A notice was published June 17, 1999/ Volume 64, Number 116, Page 32486 and the Group was selected consisting of ten American and ten Palestinian representatives. Both sides have now determined to enlarge the Group. This notice announces membership opportunities for American business representatives on the U.S. side of the Group.

DATES: In order to receive full consideration, requests must be received on or before January 5, 2000.

ADDRESSES: Please send your requests for consideration to Paul Thanos, Desk Officer, Office of the Near East, U.S. Department of Commerce, either by fax at (202) 482–0878 or by mail to Room 2029B, U.S. Department of Commerce. 14th and Constitution, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Paul Thanos, Desk Officer, Office of the Near East, U.S. Department of Commerce, Room 2029B, 14th and Constitution Avenue, NW, Washington DC 20230, Phone 202–482–1857.

SUPPLEMENTARY INFORMATION: The U.S.-Palestinian Bilateral Committee agreed at its February 16, 1999 meeting to establish a private sector-led business advisory group to provide input to the subcommittee on Trade and Investment. This advisory group, to be named the United States-Palestinian Business Advisory Group (USPBAG)—will make recommendations that reflect private sector views, needs, and concerns regarding business development in the West Bank and Gaza and commercial ties between Americans and Palestinians. The USPBAG will advise the Trade and Investment Subcommittee on the following areas:

- Initiatives that can be taken to promote economic activity between American and Palestinian businesses.
- Palestinian commercial and investment laws.
- Palestinian and U.S. trade policies.
- Palestinian economic policies and their impact on the business climate.

The USPBAG is comprised of two sections, an American section and a Palestinian section. Each section now has ten members, with members serving two year terms. The Group has yet to convene, and both sides have now agreed to expand membership by up to five on each side.

The members of each section will, to the extent possible, represent diverse commercial sectors. Priority sectors include: agribusiness and food processing; banking communications; engineering and construction; information technology; insurance; manufacturing; power generation; restaurant and hospitality; tourism; and software, music, video production, textiles, and retailing. The State Department will appoint members in consultation with the Commerce Department.

Private sector members will serve in a representative capacity presenting the views and interests of their particular industry. Private sector members are not special government employees. U.S. members serve at the discretion of the Secretary of State. Members will not receive compensation for their participation in USPBAG activities. Members participating in USPBAG meetings and events will be responsible for their own travel, living, and other personal expenses.

In order to be eligible for membership in the U.S. section, a potential candidate must be:

- A U.S. citizen residing in the United States.
- A holder of a significant position in a private sector company that has a unique technical expertise and outstanding reputation.
- Not a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

In reviewing eligible candidates, the Department of State and Department of

Commerce will consider such selection factors as:

- Experience and interest in the West Bank and Gaza markets.
- Industry or service sector represented.
- Export/investment experience.

To be considered for membership, please provide the following: name(s) and title(s) of the individual(s) requesting consideration; name and address of the company or organization sponsoring each individual; company's product, service, or technical expertise; size of the company; export trade, investment, or international program experience and major markets; and a brief statement of why the candidate(s) should be considered for membership in the USPBAG.

Dated: November 30, 1999.

Thomas R. Parker,

Director, Office of the Near East.

[FR Doc. 99–31448 Filed 12–3–99; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 991109300–9300–01]

RIN 0693–ZA35

Announcement of Availability of Funds for a Competition—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) announces that it will hold a single fiscal year 2000 Advanced Technology Program (ATP) competition. This single competition will continue ATP's practice of being open to all technology areas, while also capturing the advantage and momentum of focused program planning. Through this single competition strategy, ATP encourages proposals from the many technical teams that have identified synergy between industry needs and ATP funding opportunities, accelerating the pursuit of critical elements of research which were identified in focused program plans. All fiscal year 2000 proposals received will be distributed to technology-specific source evaluation boards in areas such as advanced materials, biotechnology, electronics, information technology, etc. This notice provides general information regarding ATP competitions.

DATES: The proposal due date and other competition-specific instructions will be published in the Commerce Business Daily (CBD) at the time the competition is announced. Dates, times, and locations of Proposers' Conferences held for interested parties considering applying for funding will also be announced in the CBD.

ADDRESSES: Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, 100 Bureau Drive, Stop 4701, Administration Building 101, Room A407, Gaithersburg, MD 20899–4701.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at http://www.atp.nist.gov.

FOR FURTHER INFORMATION CONTACT: Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free ''hotline'' number at 1–800–ATP–FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If you reach ATP voice mail, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address;

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to atp@nist.gov. Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION:

Background

The ATP statute originated in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n) but was amended by the American Technology Preeminence Act of 1991 (Pub. L. 102–245). This law has been codified at 15 U.S.C. § 278n. The ATP implementing regulations are published at 15 CFR Part 295, as amended. The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The ATP is a rigorously competitive cost-sharing program designed for the Federal government to work in partnership and industry to foster the development and board dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation. Such a unique government-industry research partnership fosters the acceleration not only of dramatic gains in existing industries, but also acceleration of the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets and work to spawn industries of the 21st century. The ATP provides multi-year funding to single companies and to industry-led joint ventures. The ATP accelerates technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership between industry and the Federal government. The ATP challenges industry to take on higher risk (but commensurately higher potential payoff to the nation) projects than they would otherwise. Proposers must provide credible arguments as to the project feasibility.

The funding instrument used in ATP awards is a ''cooperative agreement.'' Through the use of the cooperative agreement, the ATP is designed to foster a government-industry partnership to accomplish a public purpose of support or stimulation. NIST plays a substantial role by providing technical assistance and monitoring the technical work, business progress, and expenditure of Federal funds.

Funding Availability

An estimated $50.7 million in first year funding will be available for new awards for a single fiscal year 2000 ATP competition to be announced in the CBD. The actual number of proposals funded under this competition will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance.

Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR part 295, as amended, and the ATP Proposal Preparation Kit dated November 1999.

Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) Single company recipients can receive up to $2 million in total for R&D activities for up to 3 years. ATP funds

may only be used to pay for direct costs for single company recipients. Single company recipients are responsible for funding all their overhead/indirect costs. Small and medium size companies applying as single company proposers are not required to provide cost-sharing of direct costs, however, they may pay a portion of the direct costs in addition to all indirect costs if they wish. Large companies applying as single company proposers, however, must cost-share at least 60 percent of the yearly total costs (direct plus indirect costs). A large company is defined as any business, including any parent company plus related subsidiaries, having annual revenues in excess of $2.896 billion. (Note that this number will likely change for future competitions and, if so, will be noted in future annual announcements of availability of funds and ATP Proposal Preparation Kits.)

(b) Joint ventures (as defined in 15 CFR 295.2(i)) can receive funds for R&D activities for up to 5 years with no funding limitation other than the announced availability of funds. However, ATP funding must be for a minority share of the yearly total project costs. Joint ventures must cost-share (matching funds) more than 50 percent of the yearly total project costs (direct plus indirect costs). The term matching funds (cost-sharing) is defined in 15 CFR Part 295.2(1).

(c) Funds derived from Federal sources may not be used to meet the cost-share requirement. Additionally, subcontractors may not contribute towards the cost-share requirement.

Application Forms and Proposal Preparation Kit

A new November 1999 version of the ATP Proposal Preparation Kit is available upon request from the ATP at the address and phone numbers noted in this notice. The Kit is also available on the Internet through the World Wide Web under the heading Publications on the ATP home page http://www.atp.nist.gov. Note that the ATP is mailing the Kit to all those individuals whose names are currently on the ATP mailing list. Those individuals need not contact the ATP to request a copy. The Kit contains proposal cover sheets, other required forms, background material, and instructions for preparing ATP pre-proposals and full proposals. All proposals must be prepared in accordance with the instructions in the Kit.

Submission of Revised Proposals

A proposer may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously submitted proposal.

Other Requirements

(a) If a proposer's proposal is judged to be of high enough quality to be invited in for an oral review, ATP reserves the right to submit a list of questions to the proposer that must be addressed prior to the oral review.

(b) There are certain types of projects that ATP will not fund because they are inconsistent with the ATP mission. These include:

(1) Straightforward improvements of existing products or product development.

(2) Projects that are predominately basic research.

(3) Pre-commercial scale demonstration projects where the emphasis is on demonstration that some technology works on a large scale or is economically sound rather than on R&D.

(4) Projects involving military weapons R&D or R&D that is of interest only to some mission agency rather than to the commercial marketplace.

(5) Projects that ATP believes would likely be completed without ATP funds in the same time frame or nearly the same time frame.

(c) Certain costs that may be allow in Federal financial assistance programs are not eligible for funding under ATP awards. Section G of the Proposal Preparation Kit lists these costs.

(d) For joint ventures, no costs shall be incurred under an ATP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

(e) Research under an ATP project involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Ave., NW, Washington, DC 20055. Information on this can also be found at http://www.nap.edu. The Institutional Animal Care and Use Committee (IACUC) associated with the proposing organization(s) must approve an Animal Study Proposal (ASP) detailing all research involving vertebrate animals before NIST Grants Officer review and release of funds. In addition to the ASP, the proposer must supply copies of all appropriate assurances or institutional certifications (with expiration dates) applicable to the types of animals involved. The assurances or institutional certifications should include at a minimum the U.S. Department of Agriculture (USDA) Animal Welfare Act registration certificate, or, if you are proposing to use animals not covered under the Animal Welfare Act (rodents, birds, and/or fish), the Association for Assessment and Accreditation of Laboratory Animals Care International (AAALAC) accreditation. Alternatively, a copy of an Animal Welfare Assurance issued by the Office of Protection from Research Risk (OPRR), National Institutes of Health (NIH) can be provided. If there is no existing IACUC to review and approve research tasks involving use of vertebrate animals in the first year of the project, the proposer is advised that it is unlikely that an award can be issued. This is due to the fact that the process to establish institutional certification can take 6 months or more; therefore, near completion of institutional certification when the proposal is submitted is strongly advised. The prohibition on the federal conduct and funding of human cloning does not apply to animal cloning.

(f) Research under an ATP project involving human subjects or human tissue must be in compliance with Department of Commerce regulations entitled ''Protection of Human Subjects,'' 15 CFR Part 27, which require that recipients whose research involves human subjects maintain appropriate policies and procedures for the protection of human subjects. Research involving human subjects may include activities such as the use of image and audio recordings of people, taking surveys or using survey data from children, using databases containing personal information, and other activities, as well as the more typical biomedical research activities, including research involving tissue and cells/cell lines from human sources.

Currently, ATP does not approve human subjects research that takes place in a foreign country as part of an ATP project. In addition, ATP typically does not accept foreign sources of human tissue, cells or data, even if the tissue, cells or data may qualify for an exemption under the rule. However, ATP will consider foreign sources of

tissue, cells and data on a limited basis if the source if scientifically recognized as unique, an equivalent source is unavailable within the US, an alternative approach is not scientifically of equivalent merit, and the specific use qualifies for an exemption under the rule.

Additional Presidential policies, statutes, regulations, and guidelines have been issued concerning types of research activities involving human subjects. NIST may not be directly named in these statutes and regulations; however, to assure that research funded by NIST involving human subjects is consistent with national policy, NIST hereby declares that it will fully adhere to these requirements. Therefore, research projects involving the protected classes of human subjects must adhere to the National Institutes of Health (NIH) regulations found at 45 CFR Part 46, Subparts B, C, and D (http://www.nih.gov:80/grants/oprr/humansubjects/45cfr46.htm). Protected classes include pregnant women, human in vitro fertilization, fetuses (all in Subpart B), prisoners (Subpart C), and children (Subpart D). If data, images or specimens are from or involve a protected class, the research must adhere to these requirements. Some examples of research involving protected classes include: medical test data from children, software usability test results involving prisoners, surveys with pregnant women as subjects, tissue and cell donations from fetal sources.

NIST applies 45 CFR 46, Subpart B to all types of gestational tissue, regardless of the source. Thus any project involving human gestational tissue (including yolk sacs, non-full-term placentae, tissue or cell lines derived from a non-viable fetus or fetal tissues/cells acquired through a third party) regardless of the source must meet the requirements in 45 CFR 46, Subpart B. Research projects involving the transplantation of fetal tissue into human subjects must adhere to Section 111 of the NIH Revitalization Act of 1993, 42 U.S.C. Section 289g–1 (http://www.nih.gov:80/grants/oprr/humansubjects/publiclaw103–43.htm). In addition, Section 112 of the NIH Revitalization Act of 1993, 42 U.S.C. Section 289g–2, contains a criminal statute prohibiting all purchases of fetal tissue for valuable consideration whether or not NIH or NIH funding is involved. Fetal research must adhere to Section 498(b) of the Public Health Service Act, 42 U.S.C. Section 289g. Embryo research must adhere to Section 513 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1998, Public Law 105–78, 111 Stat. 1467 (http://www.nih.gov/grants/notice-files/not98-013.html). Research involving xenotransplantation into human subjects must adhere to the FDA guidelines published at 61 FR 49919 (September 23, 1996) (http://www.fda.gov/cber/gdlns/xeno.txt). All research projects will adhere to the Presidential Directive, 33 Weekly Comp. Pres. Doc. 281 (March 10, 1997) (http://www.nih.gov/grants/policy/cloning directive.htm), prohibiting the federal conduct and funding of research involving human cloning. This prohibition does not apply to the federal conduct and funding of research involving animal cloning. In addition, proposers are reminded that ATP only rarely supports research as part of Phase I clinical trials; to be funded, this type of research must be judged to be consistent with the ATP scientific and technological merit selection criterion. Pursuant to the above, any tasks in the proposal involving research with human subjects or human tissue, that are not exempt under 15 CFR Part 27.10(b), must be approved by an Institutional Review Board (IRB) and the NIST Grants Officer before funding will be released.

Projects with human subjects research in the first year must supply either exemption documentation or IRB documentation for non-exempt research by the time of the oral review. The exemptions at 15 CFR 27.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, Subparts B and C. The exemption at 15 CFR 27.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to children, Subpart D, except for research involving observations of public behavior where the investigator(s) do not participate in the activities being observed. Projects with human subjects in the outyears of the project must supply appropriate deferral documentation. Projects with protected classes subject to Subpart B in ANY year of the project MUST provide IRB review documentation by the time of the oral review. Unless documentation is provided for the limited exemption allowed for research under Subpart D, research projects involving protected classes of human subjects as defined in 45 CFR Part 46, Subparts B, C, and D must be reviewed and approved by an IRB that possesses a current assurance which has been approved by OPRR for federal-wide use, and appropriate for the research in question. No award involving protected classes as defined under 45 CFR Part 46, Subpart B, will be issued until the proposer has certified that an appropriate IRB has made the determinations required under Subpart B, and all other NIST approvals have been completed. This applies to involvement of protected classes under Subpart B in ANY year of the project, not just the first year. Therefore, IRB approval for any tasks involving protected classes of human subjects under Subpart B at any time during the proposed ATP award period must accompany the proposal, or be supplied at oral review if the proposal is selected as a semifinalist. Further descriptions of the required documentation are provided in the ATP Proposal Preparation Kit.

(g) In any invention resulting from work performed under an ATP project in which an ATP recipient has acquired title, NIST has the right, in accordance with 15 CFR 295.8(a)(2) and any supplemental regulations of NIST, to require the recipient, an assignee, or an exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the recipient, assignee, or exclusive licensee refuses such a request, NIST has the right to grant such a license itself if NIST determines that:

(1) Such action is necessary because the recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or

(4) Such action is necessary because of the requirement that the recipient grant licenses to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible, is not adhered to, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of the aforementioned requirement.

The preceding information describes NIST's legal rights with regards to patents. However, potential proposers should not interpret these rights as indicating that NIST intends to manage an awardee's intellectual property.

Quite the contrary. First of all, these rights only apply to patents resulting from the ATP project itself, and not from work done before or after the ATP project, or other R&D performed by the company in the same time frame that is not part of the ATP-funded tasks. More importantly, the provisions above would ONLY be invoked under very unique circumstances. For example, if an ATP project developed a cure for cancer, but for some strange reason the company chose not to commercialize the technology, the ATP might, only after verifying that the company had no intention of using the technology, invoke provision 2 and try to find another company willing to take a license and bring the new development to market. In the over 300 projects funded to date, NIST has never had to exercise the rights noted above.

(h) Proposers shall provide sufficient funds in the project multi-year budget for a project audit, including each joint venture participant. Subcontractors/subawardees, including universities, who receive total funding under an ATP project totaling more than $300,000 each are also subject to the audit requirement. A subcontractor/subawardee is defined as an organization which receives a portion of the financial assistance from the recipient/awardee and assists the ATP recipient/awardee in meeting the project goals but does not include procurement of goods and services. It is the responsibility of the recipient to ensure that audits are performed in a timely fashion. Most routine audits can be performed by the recipient's external CPA. However, the Department of Commerce Office of Inspector General (DoC/OIG) and General Accounting Office (GAO) reserve the right to carry out audits as deemed necessary and appropriate. ATP recipients must be willing to submit to audits (e.g., audits of cost-accounting systems, direct-cost expenditures, indirect cost rates, or other periodic reviews) by the DoC/OIG or cognizant Federal agency Inspectors General or GAO. Periodic project audits shall be performed as follows:

(1) For awards less than 24 months, an audit is required at the end of the project.

(2) For 2-, 3-, or 4-year awards, an audit is required after the first year and at the end of the project.

(3) For 5-year awards, an audit is required after the first year, third year, and at the end of the project.

Budgeting for an audit shall be as follows:

(1) Proposers should allocate funds in their proposal budgets under the ''Other'' direct cost category for the project audit. For joint ventures, this must be included in each participant's budget, as each participant is responsible for the performance of their own project audit.

(2) If an organization's indirect cost pool includes audit costs, this is acceptable. In these cases, an explanation must be provided in the budget narrative and no audit costs reflected under ''Other'' costs.

(3) If a cognizant Federal agency auditor is resident within the company, the cognizant Federal agency auditor may perform the audit. In these cases, an explanation must be provided in the budget narrative and no audit costs reflected under ''Other'' costs or ''Indirect Costs.''

Audits of all recipients shall be conducted in accordance with Government Auditing Standards (GAS), issued by the Comptroller General of the United States (the Yellow Book). If an ATP recipient is required to have an audit performed in accordance with OMB Circular A–133, Audits of States, Local Government, and Non-Profit Organizations, the annual Circular A–133 audit is deemed to meet the ATP audit requirement.

If an ATP recipient does not have an annual Circular A–133 audit performed, the recipient should follow the following project audit requirements:

(1) Audits for single company recipients shall be conducted using the NIST Program-Specific Audit Guidelines for Advanced Technology Program (ATP) Cooperative Agreements with Single Companies.

(2) Audits for joint venture recipients shall be conducted using the NIST Program-Specific Audit Guidelines for Advanced Technology Program (ATP) Cooperative Agreements with Joint Ventures.

(i) Indirect costs charged to ATP cooperative agreements or used as cost-sharing must be calculated in accordance with an approved indirect cost proposal. If a recipient has established an indirect cost rate with its cognizant Federal agency (the Federal agency providing the greatest dollars), the recipient must submit a copy of the negotiated agreement to the DoC/OIG for verification. If an indirect cost rate(s) has not been negotiated prior to receiving the award, then an indirect cost rate proposal must be submitted to the recipient's cognizant Federal agency within 90 days from the date of the award. Provisional rates provided by the joint venture participant in the indirect cost proposal may be used until approval is obtained or indirect cost rates are negotiated.

(j) All ATP recipients must agree to adhere to the U.S. Export Administration laws and regulations and shall not export or re-export, directly or indirectly, any technical data created with Government funding under an award to any country for which the United States Government or any agency thereof, at the time of such export or re-export requires an export license or other Governmental approval without first obtaining such licenses or approval and the written clearance of the NIST Grants Officer. The Bureau of Export Administration (BXA) shall conduct an annual review for any relevant information about a proposer and/or Recipient. NIST reserves the right to not issue any award or suspend or terminate an existing award in the event that significant adverse information about a proposer or Recipient is disclosed by BXA to the NIST Grants Officer.

(k) *Federal Policies and Procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, procedures applicable to Federal financial assistance awards as identified in the cooperative agreement award.

(l) *Past Performance.* Unsatisfactory performance under prior Federal awards may result in a proposal not being considered for funding.

(m) *Pre-award Activities.* Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is not obligation on the part of NIST to cover pre-award costs.

(n) *No Obligation for Future Funding.* If a proposal is selected for funding, NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(o) *Delinquent Federal Debts.* No award of Federal funds shall be made to a proposer or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(p) *Name Check Review.* All for-profit and non-profit proposers are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the proposer have been convicted of or are

presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the proposer's management, honesty, or financial integrity.

(q) *Primary Applicant Certification.* All primary proposers (including all joint venture participants) must submit a completed form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanation is hereby provided:

(1) Nonprocurement Debarment and Suspension. Prospective participants, as defined at 15 CFR part 26, section 105 are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) Drug-Free Workplace. Grantees (as defined at 15 CFR part 605) are subject to 15 CFR 26, subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 USC 1352, ''Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification from prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying Disclosures. Any proposer that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, Appendix B.

(r) *Lower Tier Certification.* Recipients shall require proposers/bidders of subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and Form SF–LLL, ''Disclosure of Lobbying Activities.'' Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(s) *False Statements.* A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(t) *Intergovernmental Review.* The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, ''Intergovernmental Review of Federal Programs'' is not applicable to this program.

(u) *American-Made Equipment and Products.* Proposers are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(v) *Paperwork Reduction Act.* This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB Control Nos. 0693–0009, 0348–0046, and 0925–0418). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

(w) *Executive Order Statement.* This funding notice was determined to be ''not significant'' for purposes of Executive Order 12866.

Dated: November 30, 1999.

Karen Brown,

Deputy Director, National Institute of Standards and Technology.

[FR Doc. 99–31505 Filed 12–1–99; 3:30 pm]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112699C]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on January 18–21, 2000.

ADDRESSES: These meetings will be held at the Ramada Plaza Beach Resort, 1500 Miracle Strip Parkway, SE, Fort Walton Beach, FL; telephone: 850–243–9161.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

January 20

8:00 a.m.—Convene.

8:15 a.m. - 3:00 p.m.—Receive public testimony on the Texas shrimp closure and the Draft Amendment for a Charter Vessel/Headboat Permit Moratorium.

3:00 p.m. - 5:30 p.m.—Receive a report of the Joint Reef Fish/Mackerel Committees, consider report recommendations, and take final action, as appropriate.

January 21

8:30 a.m. - 9:00 a.m.—Receive the Shrimp Management Committee Report, consider report recommendations, and take final action, as appropriate.

9:00 a.m. - 9:30 a.m.—Receive the Mackerel Management Committee Report.

9:30 a.m. - 10:00 a.m.—Receive the Ad Hoc Sustainable Fisheries Management Committee Report.

10:00 a.m. - 10:15 a.m.—Receive the Data Collection Committee Report.

10:15 a.m. - 10:30 a.m.—Receive the Habitat Protection Committee Report.

10:30 a.m. - 10:45 a.m.—Receive the South Atlantic Fishery Management Council Liaison Report.

10:45 a.m. - 11:30 a.m.—Receive Enforcement Reports.

11:30 a.m. - 11:50 a.m.—Receive Director's Reports.

11:50 a.m.- 12:00 p.m.—Other Business.

Committees

January 18

9:00 a.m. - 12:00 noon—Convene the Shrimp Management Committee to hear a NMFS presentation and make recommendations regarding the Texas shrimp closure. They will also consider an Options Paper for Shrimp

Amendment 10 which addresses reduction of trawl bycatch in the eastern Gulf.

1:00 p.m. - 4:30 p.m.—Convene the Ad Hoc Sustainable Fisheries Committee to review NMFS' partial disapproval of the Sustainable Fisheries Act Amendment and develop recommendations.

4:30 p.m. - 5:30 p.m.—Convene the Data Collection Committee to hear a presentation by the Gulf States Marine Fisheries Commission (GSMFC) on the Charter Vessel Pilot Study and develop recommendations.

January 19

8:00 a.m. - 12:30 p.m.—Convene the Joint Reef Fish/Mackerel Management Committees to review public hearing summaries and consider recommendations of the AP, Socioeconomic Panel (SEP), and SSC regarding the Draft Amendment for a Charter Vessel/Headboat Permit Moratorium.

1:30 p.m. - 2:30 p.m.—Convene the Habitat Protection Committee to hear a NMFS presentation on the Fenholloway River Pollution Discharge and develop recommendations.

2:30 p.m. - 5:30 p.m.—Convene the Mackerel Management Committee to review a draft of the Dolphin/Wahoo Fishery Management Plan that has been prepared by the South Atlantic, Gulf, and Caribbean Fishery Management Councils and consider the recommendations of the Advisory Panel (AP), and Scientific and Statistical Committee (SSC).

The committees will then develop recommendations for final action by the Council. The full Council will take final action on those recommendations on Thursday afternoon, January 20.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified 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.

A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 10, 2000.

Dated: November 30, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–31554 Filed 12–3–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 30, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59942, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 6, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
335	181,675 dozen.
369–S [2]	2,099,259 kilograms.
634	596,876 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–31494 Filed 12–3–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Quota Requirements for Certain Textile Products Produced or Manufactured in All Countries and Made Up in the European Community (EC)

November 23, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and quota requirements to permit the use of a single visaed document and Electronic Visa Information System (ELVIS) transmission for certain textile products made up in the European Community.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Currently, entry into the customs territory of the United States for consumption and withdrawal from warehouse for consumption of certain textiles and textile products for which the country of origin has not issued an appropriate visa is prohibited. Moreover, if the quantity indicated on the visa is less than that of the shipment, entry is prohibited.

On August 16, 1999, the United States and the European Community (EC) (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom) signed a Proces-Verbal which concerned U.S. rules of origin for certain textile products. In that agreement, the United States agreed that a single import visaed invoice/license can be used on multiple shipments of textile products of cotton or consisting of fiber blends containing 16 percent or more by weight of cotton exported from the EC and classified in the following Harmonized Tariff Schedule (HTS) headings and subheadings 6117.10, 6213, 6214, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85 and 9404.90.95, or products of cotton classified in HTS headings 6302.21, 6302.51, 6302.91, 6303.91, 6304.92 or 9404.90.80.

These products must be made up in an EC Member State from fabric which is dyed and printed in an EC Member State and has undergone in a Member State two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing or moireing.

As a result, CITA is directing the U.S. Customs Service to amend the current textile and apparel visa requirements for products manufactured in all countries (WTO and non-WTO member countries) subject to such requirements. The U.S. Customs Service is directed to permit the use of a single visaed document and Electronic Visa Information System (ELVIS) transmission for these products exported from the EC on and after August 16, 1999. For shipments of such products, if the quantity indicated on the visa is greater than the shipment, the visa will be valid for subsequent shipments, but the total quantity of imports entered using a visa may not exceed the quantity indicated on the visa.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the World Trade Organization (WTO) Agreement on Textiles and Clothing; and the Proces-Verbal, dated August 16, 1999 between the Governments of the United States and the European Community (EC), you are directed to amend the current textile and apparel visa requirements for products manufactured in all countries (WTO and non-WTO member countries) and made up in the European Community.

Effective on January 1, 2000, you are directed to permit a single visaed document and Electronic Visa Information System (ELVIS) transmission to be used on multiple shipments of textile products of cotton or consisting of fiber blends containing 16 percent or more by weight of cotton classified in the following Harmonized Tariff Schedule (HTS) of the United States headings and subheadings 6117.10, 6213, 6214, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85 and 9404.90.95, or products of cotton classified in the following HTS headings 6302.21, 6302.51, 6302.91, 6303.91, 6304.92 or 9404.90.80, exported from the EC. Such products must be made up in an EC Member State from fabric which is dyed and printed in a Member State and has undergone in a Member State two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing or moireing.

For shipment of the above products, if the quantity indicated on the visa is greater than the shipment, the visa will be valid for subsequent shipments, but the total quantity of imports entered using a visa may not exceed the quantity indicated on the visa. This only applies to shipments exported from the EC on and after August 16, 1999.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–31495 Filed 12–03–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Environmental Impact Statement—Atlantic Coast of Long Island, From Fire Island Inlet to Montauk Point, NY, Reach 1—Fire Island Inlet to Moriches Inlet; Interim Plan for Storm Damage Protection

AGENCY: U.S. Army Corps of Engineers, Army, DOD.

ACTION: Notice of availability.

SUMMARY: The responsible lead agency is the U.S. Army Corps of Engineers, New York District. The responsible cooperating agencies are the National Park Service's Fire Island National Seashore and the U.S. Fish and Wildlife Service. The sponsor for this project will be the New York State Department of Environmental Conservation. The Fire Island Interim Project (FIIP) area is bounded by Fire Island Inlet to the west and Moriches Inlet to the east, and includes a National Park known as the Fire Island National Seashore (FIIS), populated communities within the Seashore, Robert Moses State Park, and Smith Point County Park. The island is approximately 30 miles in length, with a width that generally varies between 800 and 2,500 feet. Fire Island is separated from the mainland of Long Island by the Great South Bay. The study area includes the shoreline, barrier beaches, bay areas and low lying mainland areas. Although the study area consists of the entire island coastline, the project will specifically target selected sections of the island which currently provide low levels of protection against overwash and breaching. The New York District has investigated public concerns within the projected area in providing interim storm damage protection. The proposed interim project is the environmentally preferred plan because the six year long interim project would provide barrier island and bay storm damage protection while maintaining the natural protective features of the barrier island.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or requests for the Draft Environment Impact Statement may be directed to: Attn: Peter M. Weppler, EIS Coordinator, (212) 264–0195, Planning Division, Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION: The Department of the Army has recommended a plan for implementation, called the interim plan.

The interim plan consists of construction of beach fill and a dune system along 11.4 miles of Fire Island. Through restoration and enhancement of the existing dunes, the interim plan would provide a continuous protective dune system to reduce overwashing and breaching of the barrier island thereby reducing storm damages to structures located on Fire Island and the bay shore of Long Island while the Fire Island to Montauk Point Study is being reformulated. The interim plan would involve an initial beach fill and dune building and is anticipated to be renourished once during its six-year life. During this six-year period, the proposed interim project would be able to withstand a storm with a return period of 44 years. The project has been designed so that only those areas with a high breach potential would receive beach fill. In environmentally sensitive areas, feeder beaches would be constructed on the up-drift side so that no construction would take place in these sensitive areas. The interim plan consists of sections of beach berm at elevation +9.5 feet above National Geodetic Vertical Datum (NGVD) with a dune elevation of + 15 feet above NGVD for a length of 18,400 feet, sections of beach berm at elevation +11.5 feet above NGVD with a dune elevation of +18 feet above NGVD for a length of 18,200 of shoreline and sections of beach berm at elevation + 9.5 above NGVD with no dune fill for a length of 23,300. The construction of the proposed beach fill and dune system includes developed as well as undeveloped lands within the Fire Island National Seashore (FIIS), Robert Moses State Park, and Smith Point County Park.

The environmental analysis found no significant effects on the human environment. No historic properties eligible for the National Register of Historic Places would be adversely affected by the proposed interim project.

The primary effects from the implementation of the proposed interim project are associated with the dredging from a borrow area 1.5 miles offshore and the fill placement along the shorefront. Placement of sand along the Fire Island beaches would result in temporary degradation of the existing beat habitat during initial construction and during the one periodic nourishment. Existing benthic organisms would be buried. Benthic species are expected to re-colonize the new beachfront with no substantial long-term impacts outside the area permanently lost by extending the beach. Use of the shoreline area by fish and avian species for feeding would be disrupted in the immediate vicinity of and during the placement of the fill. Decreased water quality and increased turbidity associated with the hydraulic placement of fill would also be expected. These impacts are anticipated to be minor and short-term due to the existing high degree of natural and human disturbance in the beach fill areas. Fish and wildlife species that use these areas are those adapted to the high wildlife species that use these areas are those adapted to the high energy, dynamic condition of the ocean shoreline. Fish and bird species would return following the period of disturbance. Federally listed threatened piping plovers (*Charadarius melodus*) currently nest at various part of the affected beachfront. Impacts to these potential-nesting sites during construction activities will be avoided though the implementation of a survey-monitoring program, coordinated with the U.S. Fish and Wildlife Service.

The Department of Interior (DOI) and Fire Island National Seashore (FIIS) have indicated concerns about the consistency of the FIIP with the General Management Plan (GMP) that has been prepared and adopted for FIIS. The first GMP premise is that FIIS ''will be managed to preserve the nationally significant natural resources while providing for environmentally compatible recreation.'' However, the GMP also recognizes that much of the island has been altered by human habitation. These alterations have disturbed the natural morphology and coastal processes. The GMP makes allowances ''to restore and maintain the dune and beach system by environmentally compatible methods.''

Public Meetings

Public meetings are intended to provide the public the opportunity to comment on the proposed plan and DEIS. A public notice issued at a later date will provide the dates, times and locations of public meeting(s). Additions to this mailing list can be made by notifying the project EIS coordinator.

Frank Santomauro, P.E.,

Chief, Planning Division.

[FR Doc. 99–31556 Filed 12–3–99; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Announcement for Extending Public Review of the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the San Timoteo Creek Flood Control Project, Reach 3B, in San Bernardino County, California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice (extension of comment period).

SUMMARY: The Draft EIS/EIR was released for public review on October 5, 1999. The Environmental Protection Agency (EPA) published a Notice of Availability for the DEIS/EIR in the **Federal Register** on October 15, 1999. As required by the National Environmental Policy Act (NEPA), the EIS/EIR provided for a 45-day public review period. The public review period was from October 15, 1999 to November 29, 1999 according to the **Federal Register** Publication.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Los Angeles District, Regional Planning Section, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Jaiswal, Technical Manager, phone (213) 452–3871.

SUPPLEMENTARY INFORMATION: A Public Hearing on the Draft EIS/EIR was conducted on November 23, 1999. The public and agencies requested an extension for the public review period. Therefore, the U.S. Army Corps of Engineers, Los Angeles District, decided to extend the public review period up to December 15, 1999.

John P. Carroll,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 99–31558 Filed 12–3–99; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Development of Corridor O, S.R. 0322, Section B02, in Centre and Clearfield Counties, PA

AGENCY: U.S. Army Corps of Engineers (CE), DOD.

ACTION: Notice of intent.

SUMMARY: The Commonwealth of Pennsylvania, Department of

Transportation (PennDOT) plans to file an application for a Department of the Army Permit for impacts to waters of the United States associated with the construction of Corridor O, S.R. 0322, Section B02. The Baltimore District, U.S. Army Corps of Engineers has determined that due to the potential environmental impacts associated with this highway development project, an EIS is required.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Michael Dombroskie Project Manager, Baltimore District, U.S. Army Corps of Engineers, State College Field Office, 3947 South Atherton Street, State College, PA 16801, Telephone Number (814) 466–7796.

SUPPLEMENTARY INFORMATION: 1. The Corridor O project area encompasses approximately 90 square miles in western Centre and eastern Clearfield Counties, Pennsylvania. The project study area extends approximately 27 miles from the village of Port Matilda near proposed Interstate 99 in a northwesterly direction to Interstate 80 near Woodland in Clearfield County. The purpose of the project, generally, will be to improve traffic flow on US 322 from I–99 to interstate 80, improve traveler safety and improve quality of life for those living along the existing highway corridor.

2. This project is specifically identified in the Transportation Equity Act for the 21st Century (TEA–21) in Section 1212(u) which states ''not withstanding any other provision of law, the Commonwealth of Pennsylvania is authorized to proceed with engineering, final design, and construction of Corridor O of the Appalachian development highway system between Bald Eagle and Interstate Route 80.''

3. To comply with relevant state laws and Corps of Engineers requirements, the Pennsylvania Department of Transportation will be preparing a combined Environmental Impact Statement (EIS) and Environmental Evaluation Report (EER). The EIS/EER will be developed to provide the Army Corps of Engineers necessary information to support its Section 404 permitting process. The EER will be developed based on requirements of Pennsylvania Act 120 and Section 2002 relating to highway project development.

4. The EIS will address, at a minimum, the following alternatives:

a. No Action: The no action alternative will address the option not to develop an improved highway corridor and would allow for the existing highway infrastructure to remain in place.

b. Upgrade of Existing Facility: This alternative would provide for the upgrade of the existing US 322 Corridor from Port Matilda to Woodland, with all major improvements occurring within the existing Corridor.

c. New Alignment Corridors: This alternative would provide for the development of a new four lane limited access highway corridor off of the existing alignment between the Village of Port Matilda and Woodland.

5. The Pennsylvania Department of Transportation has proposed an extensive public and agency involvement/coordination effort.

a. The Pennsylvania Department of Transportation has already hosted a two-day kick-off meeting for the project which involved the natural resource and permitting agencies as well as key citizens and Citizen Advisory Committee members within the project area.

b. An agency scoping meeting has been held to review the scope of the project.

c. PennDOT has proposed an extensive public and agency involvement program, which will be carried out throughout the duration of the project.

d. This project will be developed utilizing a four phase project development process including a visioning phase wherein performance measures will be developed, a development stage wherein initial alternatives will be identified, a refinement stage wherein a reduced set of the alternatives will be evaluated in further detail and a final comparison stage during which a preferred alternative will be identified.

e. Any Federal, State, County or Local Agencies, Effected Indian Tribes or other interested private organizations or parties may submit comments directly to the Baltimore District at the address listed above.

f. Construction of the proposed project may effect a number of environmental cultural and socioeconomic resources

(1) Preliminary environmental concerns include: water quality; impacts to and proposed replacement of wetland functions and values; passage of aquatic and terrestrial habitat species; loss of upland habitat; and lose of aquatic habitat.

(2) Cultural Resources that may be effected include: Early 19 Century structures/sites associated with historic activities in the project area and archeological resources associated with these same activities.

(3) Socioeconomic factors which will be considered include changes in traffic patterns, economic benefit, land use changes, and development patterns which may be reasonably expected in response to the improvement of interchanges.

6. Although the Baltimore District will act as lead agency for compilation of the EIS, the Baltimore District neither supports nor opposes the project. The EIS is to be compiled to satisfy CE Permit Regulations (33 CFR 320 et seq.); the Clean Water Act (as amended), Section 401 (33 U.S.C. 1251–1376), and Section 404 (b)(1) Guidelines (40 CFR part 230); the National Environmental Policy Act (CEQ Regulations: 40 CFR 1500–1508); Section 2 of the Fish and Wildlife Coordination Act (16 U.S.C. 661–666); Section 7 of the Endangered Species Act (as amended); Section 106 of the Historic Preservation Act [16 U.S.C. 470(F)] (as amended) and Title 25, DEP Chapter 105 Rules and Regulations, (as amended).

7. The Pennsylvania Department of Transportation anticipates completing the EIS/EER on or about December 2001.

Paul R. Wettlaufer,

Acting Chief, Pennsylvania Section.

[FR Doc. 99–31557 Filed 12–3–99; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Grant of Exclusive License

AGENCY: U.S. Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(I), announcement is made of exclusive license of the following Foreign Patents, entitled ''Concrete Armor Unit for Protecting Coastal and Hydraulic Structures and Shorelines,''

Country: Oman.

Action: Published according to local custom.

Publishing Date: December 19, 1997.

Country: Saudi Arabia.

Application Number: 97170625.

Filing Date: February 19, 1997.

Country: Egypt.

Serial Number: 1061.

Filing Date: September 3, 1998.

Country: Kuwait.

Serial Number: IP144/98.

Filing Date: September 19, 1998.

Country: Jamaica.

Serial Number: 18–1–3903

Filing Date: February 26, 1999.

Country: Australia.
Patent Number: 675167.
Filing Date: August 17, 1994.
Country: New Zealand.
Patent Number: 273135.
Filing Date: August 17, 1994.

ADDRESSES: U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS, 39180–6199, ATTN: CEWES–OC.

DATES: Written objections must be filed not later than February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Stewart (601) 634–4113.

SUPPLEMENTARY INFORMATION: A Concrete Armor Units were invented by Jeffrey A. Melby and George F. Turk. Rights to United States patent and the patent applications have been assigned to the United States of America as represented by the Secretary of the Army. The Army United States of America as represented by the Secretary of the Army intends to grant exclusive license for all fields of use, in the manufacture, use, and sale in the territories and possessions, including territorial waters of, Oman, Saudi Arabia, Egypt, Kuwait, Jamaica, Australia and New Zealand, to Concrete Technology Corporation, P.O. Box 1159, Tacoma, WA 98401.

Pursuant to 37 CFR 404, 7(a)(1)(I), any interested party may file a written objection to this exclusive license agreement.

Richard L. Frenetee,

Counsel.

[FR Doc. 99–31559 Filed 12–3–99; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, 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: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 29, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before February 4, 2000.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: November 30, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.
Title: Carl D. Perkins Vocational and Technical Education Act (P.L. 105–332)—State Plans.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 56.
Burden Hours: 9,296.
Abstract: Pub. L. 105–332 requires eligible State agencies to submit a 5-year State plan, with annual revisions as the agency deems necessary, in order to receive Federal funds. Program staff review the plans for compliance and quality.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO—IMG—Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287or electronically at her internet address Sheila Carey@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. 99–31460 Filed 12–3–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, 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 February 4, 2000.

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 Leader, 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: November 30, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Data Collection for the Program for International Student Assessment (PISA).

Frequency: Full-scale study.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 13,200.

Burden Hours: 11,000.

Abstract: PISA will collect policy-oriented and internationally-comparable indicators of student achievement in reading, mathematics, and science at the ''end'' of secondary school on a timely and regular basis (every three years). For comparability with other education systems around the world, 15-year-old students will be assessed in the U.S. and comparisons of results will be made with approximately 30 countries.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651,or should be electronically mailed to the internet address *OCIO* IMG Issues@ed.gov or should be faxed to (202) 708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 703–426–9692 or electronically at her internet address Kathy Axt@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.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Beginning Postsecondary Students Longitudinal Study 1996–2001 (BPS: 1996/2001).

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 569.

Burden Hours: 224.

Abstract: The Beginning Postsecondary Students Longitudinal Study Second Follow-Up will continue the series of longitudinal data collection efforts started in 1996 with the National Postsecondary Student Aid Aid Study to enhance knowledge concerning progress and persistence in postsecondary education for new entrants. The study will address issues such as progress, persistence, and completion of postsecondary education programs, entry into the work force, the relationship between experiences during postsecondary education and various societal and personal outcomes, and returns to the individual and to society on the investment in postsecondary education.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *OCIO* IMG Issues.ed.gov or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 703–426–9692 or electronically at her internet address Kathy Axt@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. 99–31461 Filed 12–3–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

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), Kirtland Area Office (Sandia). Federal Advisory Committee Act (Pub L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 15, 1999: 5:30 p.m.–9:00 p.m. (MST).

ADDRESSES: Afro-American Cultural Center, 2900 Broadway Boulevard, SE, Albuquerque, NM 87102, (505) 242–2340.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, (505) 845–4094.

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

5:30–6:15 p.m. DOE Quarterly Update—''Burn Site Cleanups''
6:15–7:15 p.m. Social Pot Luck
7:15–7:30 p.m. Check In—Agenda—Minutes
7:30–7:45 p.m. Public Comment
6:45–8:00 p.m. Celebrate Success—Sandia SSAB review of past year accomplishments
8:00–8:45 p.m. Coordinating council's proposal for Task Groups to address Work Plan 200, Coordinating Council's proposal for Timeline, Discuss field trips and on-site meeting options, Overall Sandia SSAB discussion, amendments if needed, and approval
8:45–9:00 p.m. Adjourn

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 Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 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 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to the Thanksgiving holiday.

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 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC, on December 1, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–31532 Filed 12–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; TransCanada Gas Services, a Division of TransCanada Energy Limited; Order Granting Long-Term Authorization To Import Natural Gas From Canada

[FE Docket No. 99–92–NG]

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that on November 23, 1999, it issued an order granting TransCanada Gas Services, A Division of TransCanada Energy Limited (TCGS) authorization to import up to 68,463 Mcf of natural gas per day from Canada plus fuel for pipeline transportation. The term of the authorization is from the date of first delivery through October 31, 2006. TCGS will sell the gas to Yankee Gas Services Company, Connecticut's largest natural gas distribution company.

This Order may be found on the FE web site at http://www.fe.doe.gov, or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., November 30, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 99–31531 Filed 12–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–5–000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1999.

Take notice that on November 22, 1999, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 200. The proposed effective date of this tariff sheet is December 1, 1999.

ALNG states that the purpose of this filing is to update its Index of Customers as of December 1, 1999.

ALNG states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31486 Filed 12–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–82–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1999.

Take notice that on November 24, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 2000:

Twenty-Sixth Revised Sheet No. 31
Fifty-Third Revised Sheet No. 32

CNG states that the purpose of this filing is to adopt the GRI surcharges established by Article II, Sections 1.2 through 1.5 of the January 21, 1998, ''Stipulation and Agreement Concerning GRI Funding'' as approved by the Commission in Docket Nos. RP97–149–003, *et al.* (the GRI Settlement).

CNG further states that the rates established by its filing correspond to those set forth in Appendix A to the GRI Settlement; the unit rate impact on CNG's GRI Adjustment Charge for each affected rate schedule is summarized in CNG's transmittal letter.

CNG states that copies of its letter of transmittal and enclosures have been served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the

web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31485 Filed 12–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–3–000]

Creole Gas Pipeline Corporation; Notice of Petition for Rate Approval

November 30, 1999.

Take notice that on November 17, 1999, Creole Gas Pipeline Corporation (Creole) filed a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1899 per Dth, plus an in-kind reimbursement of fuel use of up to 2.25 percent, for gas transportation service to be performed on the Gloria System under Section 311 of the Natural Gas Policy Act of 1978.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's Regulations, if the Commission does not act within 150 days of the filing date, the proposed rate for transportation service will be deemed air and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before December 14, 1999. The petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31484 Filed 12–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–81–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1999.

Take notice that on November 23, 1999, Equitrans L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet to become effective January 1, 2000.

Second Revised Sheet No. 5
Third Revised Sheet No. 6
First Revised Sheet No. 10

Equitrans states that the purpose of this filing is to comply with the ''Order Approving the Gas Research Institute's 2000 Research, Development and Demonstration Program and 2000–2004 Five Year Plan'' issued on September 29, 1999 in Docket No. RP99–323–000. The Commission authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 2000 GRI unit surcharge approved by the Commission is (1) $0.2000 per dekatherm (Dth) per month demand surcharge for high load factor customers, (2) $0.1230 per Dth month demand surcharge for low load factor customers and (3) $0.0072 per Dth commodity/usage surcharge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31491 Filed 12–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–024]

Kansas Pipeline Company; Notice of Revised Tariff Filing

November 30, 1999.

Take notice that on November 22, 1999, Kansas Pipeline Company (Applicant) tendered for filing, revisions and corrections to its FERC Gas Tariff, Original Volume No. 1. Applicant further requests waiver of the Commission's 30-day filing requirement so that the tariff sheets will be effective December 1, 1999. These tariff sheets are listed in Appendix A to Applicant's filing.

Applicant states that the modified tariff reflect corrections to tariff sheets filed by Applicant on November 16, 1999, order in the above-captioned docket. Applicant further states that a copy of this filing is available for public inspection during regular business hours at Applicant's offices located at 8325 Lenexa Drive, Lenexa, Kansas 66214. Applicant indicates that copies of this filing are being served on all parties to the proceeding in Docket No. CP96–152. It is further indicated that the contact person for this filing is Mr. James Armstrong at (913) 888–7139.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, on or before December 9, 1999, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This application may be viewed on the Commission's website at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

Appendix A—Tariff Sheets Submitted With November 22, 1999, Compliance Filing

Effective December 1, 1999

Substitute Second Revised Sheet No. 289
Substitute Original Sheet No. 290
Substitute Original Sheet No. 291

Substitute Original Sheet No. 293
[FR Doc. 99–31483 Filed 12–3–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–79–000]

Kern River Gas Transmission Company; Notice of Tariff Filing

November 30, 1999.

Take notice that on November 23, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective January 1, 2000.

Fifteenth Revised Sheet No. 5
Thirteenth Revised Sheet No. 6

Kern River states that the purpose of the filing is to update Kern River's tariff to reflect the 2000 GRI surcharges, in compliance with the Commission's Order Approving the Gas Research Institute's Year 2000 Research, Development and Demonstration Program and 2000–2004 Five-year Plan, issued on September 29, 1999.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31489 Filed 12–3–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–77–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1999.

Take notice that on November 22, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective January 1, 2000.

Natural states that the purpose of this filing is to implement a new Rate Schedule IBS (Interruptible Balancing Service), under which Natural would provide an interruptible balancing service for end-use facilities specified by the Shipper, in conjunction with transportation under Rate Schedule FTS, FTS–G or ITS. Natural also states that conforming tariff changes were made in the General Terms and Conditions of its Tariff.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective January 1, 2000.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31487 Filed 12–3–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–78–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1999.

Take notice that on November 23, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to be effective as indicated:

Third Revised Volume No. 1, (To Be Effective January 1, 2000)

Seventeenth Revised Sheet No. 5
Twelfth Revised Sheet No. 5–A
Ninth Revised Sheet No. 7
Twelfth Revised Sheet No. 8
Eighth Revised Sheet No. 8.1

Original Volume No. 2 (To Be Effective January 1, 2000)

Twenty-Seventh Revised Sheet No. 2.1
Twenty-Fifth Revised Sheet No. 2.2

Original Volume No. 2 (To Be Effective November 1, 1998)

Twenty-Sixth Revised Sheet No. 2–A

Northwest states that the purpose of this filing is to revise its tariff (1) to change Northwest's daily reservation/demand rates to reflect 366 days in 2000, (2) to incorporate the Gas Research Institute (GRI) surcharges approved by the Commission for 2000 and (3) to correct the rates on Sheet No. 2–A Original Volume No. 2.

Northwest states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31488 Filed 12–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–80–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1999.

Take notice that on November 23, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A, to the filing, with an effective date of January 1, 2000.

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect the 2000 General RD&D Funding Units authorized in the Order Approving Settlement, issued by the Commission on April 29, 1998, in Docket No. RP97–149–003, et al., at 83 FERC ¶ 61,093.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–31490 Filed 12–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

November 30, 1999.

Take notice that the following two hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1494–194 and 1949–195.

c. *Dates Filed:* August 31, 1999 and September 3, 1999.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mary E. Von Drehle, Grand River Dam Authority P.O. Box 409, Vinita, OK 74301 (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofrancesco at *Jon.Cofrancesco@ferc.fed.us* or telephone 202–219–0079.

j. *Deadline for filing comments and or motions:* January 7, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the project number (1494–194 or 1494–195) on any comments or motions filed.

k. *Description of Project:* 1494–194 Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to issue a permit to Frank Ronsee, d/b/a Anchors End Family Resort, to add one dock (50′ X 24′) containing 4 boat slips to an existing commercial facility, containing seven docks and 42 boat slips for the use by patrons of Anchors End Family Resort.

Project No. 1494–195 Grand River Dam Authority requests Commission authorization to issue a permit to John LaPlant, d/b/a LAPCO Investments (Ketchum Cove Resort), to add two docks (78′ X 88′ and 82′ X 100′) containing a total of 20 boat slips to an existing commercial facility containing one dock with 16 boat slips for use by patrons of Ketchum Cover Resort.

l. *Location of the applications:* A copy of the applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–31482 Filed 12–3–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6500–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Monthly Progress Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Monthly Progress Reports, EPA ICR Number 1039.09, OMB Control Number 2030–0005, expiration date March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 5, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1039.09.

SUPPLEMENTARY INFORMATION: *Title:* Monthly Progress Reports (OMB Control No. 2030–0005; EPA ICR No. 1039.09; expiring 3/31/2000). This is a request for an extension of a currently approved collection.

Abstract: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/ indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor contractor progress under the contract. Responses to the information collection are mandatory for contractors performing under a cost reimbursement contract, and are required in order to receive monthly reimbursement of cost incurred. Information submitted is protected from release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

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. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/9/99 (64 FR 43177); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 36.25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Contractors holding cost reimbursable contracts with EPA.

Estimated Number of Respondents: 407.

Frequency of Response: Monthly.

Estimated Total Annual Hour Burden: 177,045 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $48,840.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1039.09 and OMB Control No. 2030–0005 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 29, 1999.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 99–31541 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6501–6]

Science Advisory Board; Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Integrated Risk Project Subcommittee of the Executive Committee, will conduct a public teleconference meeting on Monday, December 20, 1999 between the hours of 1:00 pm–3:00 pm. The meeting will be coordinated through a conference call connection in Room 6013 in the Ariel Rios Building South, 1200 Pennsylvania Avenue, NW, Washington, DC 20004 (adjacent to the escalator to the Federal Triangle Metro Station). The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call are given below.

Purpose of the Meeting

At this meeting the Integrated Risk Project Subcommittee will review the report of the Integrated Risk Project: *Towards Integrated Environmental Decision-Making.* Any member of the public wishing further information concerning the meeting or wishing to submit brief oral comments should contact Dr. John R. Fowle III, Designated Federal Officer for the Integrated Risk Project Subcommittee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 564–4547; FAX (202) 501–0323; or via e-mail at <fowle.jack@epa.gov>.

Contacting SAB Staff and Obtaining Meeting Information

To obtain copies of the meeting agenda or Subcommittee roster, or to obtain information concerning the teleconference and how to participate, please contact Ms. Mary Winston, Management Assistant to the Subcommittee, Science Advisory Board

(1400A), U.S. Environmental Protection Agency, Washington DC 20460; at Tel. (202) 564–4538; FAX (202) 501–0582; or via e-mail: <winston.mary@epa.gov>.

To request time to provide brief oral comments at the meeting, please contact Dr. Fowle *in writing* by mail, fax or e-mail at the addresses given above no later than 12 noon by Tuesday, December 14, 1999. Please be sure to provide a summary of the issue you intend to present, your name and address (include phone, fax and e-mail) and the organization (if any) you will represent. Written comments should be submitted to Ms. Winston at the above address prior to the meeting date.

Copies of the draft *Towards Integrated Environmental Decision-Making* will be available on the SAB Website (*www.epa.gov/sab*) approximately 10 days before the meeting.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0582.

Meeting Access

Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact Dr. Fowle at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 24, 1999.

Donald G. Barnes, PhD,

Staff Director, Science Advisory Board.

[FR Doc. 99–31539 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6501–5]

Science Advisory Board; Executive Committee, Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public teleconference meeting on Tuesday, December 21, 1999, between the hours of 10:00 a.m.–12:00 p.m (Eastern Standard Time). The meeting will be coordinated through a conference call connection in Room 6013 in the Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004 (adjacent to the escalator to the Federal Triangle Metro Station on 12th Street NW). The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Betty Fortune at (202) 564–4533, or via e-mail at: <fortune.betty@epa.gov> by December 14, 1999.

Purpose of the Meeting

At this meeting the Executive Committee tentatively plans to review reports from at least two of its Committees/Subcommittees: (a) EC Subcommittee's ''An SAB Report: Application of the Cancer Risk Assessment Guidelines to Children'', and (b) Ecological Processes and Effects Committee's (EPEC) ''An SAB Report: Metals in Sediments Method.''

For Further Information

Any member of the public wishing further information concerning the meeting or wishing to submit brief oral comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at <barnes.don@epa.gov>. Copies of the draft meeting agenda and draft reports will be available on the SAB Website (http://www.epa.gov/sab) at least one week prior to the meeting.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0582.

Meeting Access

Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 26, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–31540 Filed 12–3–99; 8:45 am]

BILLING CODE 6560–50–P

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 forthcoming 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 December 9, 1999, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm

Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. 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*
—November 10, 1999 (Open and Closed)
B. *Report*
—FCS Building Association Quarterly Report
C. *New Business—Regulations*
1. Stock Issuance [12 CFR parts 611 and 615] (Proposed)

**Closed Session*

A. *Report*
—OSMO Report

*Session Closed—Exempt pursuant to 5 U.S.C. 552(c)(8) and (9).

Dated: December 2, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–31691 Filed 12–2–99; 3:43 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 26, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 5, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0106.

Title: Section 43.61—Reports of Overseas Telecommunications Traffic.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 400 respondents; 440 total annual responses.

Estimated Time Per Response: 48 hours.

Frequency of Response: Quarterly and annual reporting requirements.

Total Annual Burden: 21,070 hours.

Total Annual Cost: $377,000.

Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. Subject carriers are required to submit their annual reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31 pursuant to Section 43.61(a)(2).

The Commission and industry members use the data in the facilities planning and facilities authorization process to estimate traffic and market trends in various regions of the world. Also, the data is used to monitor the development and competitiveness of U.S. international product and geographic markets and to gauge the competitive impact of Commission decisions on these markets. Additionally, the data assists the Commission in tracking the growth in net settlement payments to foreign carriers. It also provides the Commission with information necessary to identify those routes for which settlement rates are at a level low enough to permit relief from certain regulatory requirements, including the prohibition of the use of private lines for the provision of switched, basic services (also referred to as ''ISR''). The Commission additionally relies on the annual and quarterly reports to monitor for traffic and revenue distortions on particular routes. These distortions may result from one-way bypass of the Commission's international settlement policy on these routes, which can increase U.S. carrier net settlement payments to their foreign correspondents.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–31450 Filed 12–3–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 29, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 5, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0161.

Title: Section 73.61, AM Directional Antenna Field Strength Measurements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,890.

Estimated Time Per Response: 4 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 36,020 hours.

Total Annual Cost: 0.

Needs and Uses: Section 73.61 requires that each AM station using directional antennas make field strength measurements as often as necessary to insure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must make field strength measurements as often as necessary. Also, all AM stations using directional antennas must make partial proofs of performance as often as necessary.

The data is used by FCC staff in field inspections/investigations and by AM licensees with directional antennas to ensure that adequate interference protection is maintained between stations and to ensure that such experimentation will not cause interference to other stations.

OMB Control No.: 3060–0212.

Title: Section 73.2080, Equal Employment Opportunity Program.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 16,251.

Estimated Time Per Response: 52 hours per year.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 845,052 hours.

Total Annual Cost: 0.

Needs and Uses: Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex.

Section 73.2080 requires that each broadcast station shall establish, maintain, and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice. This section incorporates specific EEO program requirements and general guidelines for meeting those requirements. These guidelines are not intended to be either exclusive or inclusive but simply to provide guidance. This program will provide an appropriate and effective means of informing broadcasters, individuals employed or seeking employment by broadcast stations of its EEO requirements.

The Commission has suspended the enforcement of Section 73.2080(b) and (c) due to the decision in Lutheran Church—Missouri Synod v. FCC, wherein the Court of Appeals held that the EEO program requirements of this section were unconstitutional. The enforcement of these requirements is suspended until the Commission revises the EEO rules to be consistent with the Court of Appeals Luther Church decision. The Commission will make such adjustments to the rule as necessary to conform to the Lutheran Church decision consistent with the record in the rulemaking. Until such times the Commission reaches a decision in the outstanding Notice of Proposed Rulemaking (NPRM) concerning the Court of Appeals Lutheran Church decision, Section 73.2080 needs to retain its current OMB control number. We note that Section 73.2080(a) remains in effect.

The data will be used by a broadcast licensee in the preparation of the stations' Broadcast Annual Employment Report (FCC Form 395–B) that is submitted annually and the station's EEO Program (FCC Form 396) submitted with the license renewal application. If this information were not maintained, there could be no assurance that licensees are complying with the EEO rule.

The Commission has suspended the filing of these forms until such time as the Commission reaches a decision in the outstanding NPRM.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–31451 Filed 12–3–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Interagency notice of Change in Director or Executive Officer.

OMB Number: 3064–0097.

Annual Burden:

Estimated annual number of respondents: 200.

Estimated time per response 2 hours.

Average annual burden hours. 400 hours.

Expiration Date of OMB Clearance: January 31, 2000.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550, 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before [insert date 30 days after date of publication in the **Federal Register**] to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the

proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The Interagency Notice of Change in Director or Executive Officer is submitted regarding the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer. The information is used by the FDIC to make an evaluation of the general character of individuals who will be involved in the management of depository institutions, as required by statute.

Dated: November 30, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–31548 Filed 12–3–99; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Westwood Homestead Financial Corporation Employee Stock Ownership Plan Trust, Cincinnati, Ohio; to retain voting shares of Westwood Homestead Financial Corporation, and thereby indirectly acquire Westwood Homestead Savings Bank, both of Cincinnati, Ohio.

Board of Governors of the Federal Reserve System, November 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31459 Filed 12–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Banks, Inc., Creve Coeur, Missouri, and First Banks America, Inc., Clayton, Missouri; to acquire 100 percent of the voting shares of Lippo Bank, San Francisco, California.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Pinnacle Bancorp, Central City, Nebraska; to acquire 100 percent of the voting shares of The Burns National Bank of Durango, Durango, Colorado, and thereby indirectly acquire Western Bank, Gallup, New Mexico. **Comments on this application must be received by December 28, 1999.**

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Security Bank Holding Company ESOP and Security Bank Holding Company, both of Coos Bay, Oregon; to acquire 100 percent of the voting shares of Williamette Valley Bank (In Organization), Salem, Oregon.

Board of Governors of the Federal Reserve System, November 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–31458 Filed 12–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST) December 13, 1999.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 8, 1999, Board member meeting.

2. Thrift Savings Plan activity report by Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 2, 1999.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–31657 Filed 12–2–99; 2:23 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File No. 991 0077]

Exxon Corp., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft compliant that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Richard Liebeskind, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2574 or 326–2441.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 30, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'' or ''FTC'') has issued a complaint (''Complaint'') alleging that the proposed merger of Exxon Corp. (''Exxon'') and Mobil Corp. (''Mobil'') (collectively ''Respondents'') would violate section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and has entered into an agreement containing consent orders (''Agreement Containing Consent Orders'') pursuant to which Respondents agree to have entered and be bound by a proposed consent order (''Proposed Order'') and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (''Order to Hold Separate''). The Proposed Order remedies the likely anticompetitive effects arising from Respondents' merger, as alleged in the Complaint. The Order to Hold Separate preserves competition in the markets for refining and marketing of gasoline, and in other markets, pending divestiture.

II. Description of the Parties and the Transaction

Exxon, which is headquartered in Irving, Texas, is one of the world's largest integrated oil companies. Among its other business, Exxon operates petroleum refineries that make various grades of gasoline and lubricant base stock, among other petroleum products, and sells these products to intermediaries, retailers and consumers. Exxon owns four refineries in the United States; those four refineries can process approximately 1.1 million barrels of crude oil and other feedstocks daily.[1] Exxon owns or leases approximately 2,049 gasoline stations nationally and sells gasoline to distributors or dealers that operate another 6,475 retail outlets throughout the United States. During fiscal year 1998, Exxon had worldwide revenues of approximately $115 billion and net income of approximately $6 billion.

Mobile, which is headquartered in Fairfax, Virginia, is another of the world's largest integrated oil companies. Among its other businesses, Mobile operates petroleum refineries in the United States, which make gasoline, lubricant base stock, and other petroleum products, and sells those products throughout the United States. Mobil operates four refineries in the United States, which can process approximately 800 thousand barrels of crude oil and other feedstocks per day. About 7,400 retail outlets sell Mobil-branded gasoline throughout the United States. During fiscal year 1998, Mobil had worldwide revenues of approximately $52 billion and net income of approximately $2 billion.

On or about December 1, 1998, Exxon and Mobil entered into an agreement to merge the two corporations into a corporation to be known as Exxon Mobil Corp. This merger is one of several consolidations in this industry in recent years, including the combination of British Petroleum Co. plc and Amoco Corp. into BP Amoco plc; the pending combination of BP Amoco plc and Atlantic Richfield Co. (which is the subject of pending investigation by the Commission); the combination of the refining and marketing businesses of Shell Oil Co., Texaco Inc., and Star Enterprises; the combination of the refining and marketing businesses of Marathon Oil Co. and Ashland Oil Co., and the acquisition of the refining and marketing businesses of Unocal Corp. by Tosco Corp.

III. The Investigation and the Complaint

The Complaint alleges that consummation of the merger would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint alleges that the merger will lessen competition in each of the following markets: (1) The marketing of gasoline in the Northeastern and Mid-Atlantic United States (including the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York (collectively ''the Northeast''), and the States of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia (collectively the ''Mid-Atlantic''), and smaller areas contained therein); (2) the marketing of gasoline in five metropolitan areas in the State of Texas; (3) the marketing of gasoline in Arizona; (4) the refining and marketing of ''CARB'' gasoline (specially formulated gasoline required in California) in the State of California; (5) the bidding for and refining of jet fuel for the U.S. Navy on the West Coast; (6) the terminaling of light petroleum products in the Boston, Massachusetts, and Washington, DC, metropolitan areas; (7) the terminaling of light petroleum products in the Norfolk, Virginia, metropolitan area; (8) the transportation of refined light petroleum products to the inland portions of the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, and Tennessee (*i.e.,* the portions more than 50 miles from ports such as Savannah, Charleston, Wilmington and Norfolk) (''inland Southeast''); (9) the transportation of crude oil from the north slope of the State of Alaska via the Trans Alaska Pipeline System (''TAPS''); (10) the importation, terminaling and marketing of gasoline and diesel fuel in the Territory of Guam; (11) the refining and marketing of paraffinic lubricant base oils in the United States and Canada; and (12) the worldwide manufacture and sale of jet turbine lubricants.

To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondents to divest or otherwise surrender control of: (1) All of Mobil's gasoline marketing in the Mid-Atlantic

[1] A ''barrel'' is an oil industry measure equal to 42 gallons. ''MBD'' means thousands of barrels per day.

(New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia), and all of Exxon's gasoline marketing in the Northeast (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York); (2) Mobil's gasoline marketing in the Austin, Bryan/College Station, Dallas, Houston and San Antonio, Texas, metropolitan areas; (3) Exxon's option to repurchase retail gasoline stores from Tosco Corp. in Arizona; (4) Exxon's refinery located in Benicia, California (''Exxon Benicia Refinery''), and all of Exxon's gasoline marketing in California; (5) the terminal operations of Mobil in Boston and in the Washington, D.C. area, and the ability to exclude a terminal competitor from using Mobil's wharf in Norfolk; (6) either Mobil's interest in the Colonial pipeline or Exxon's interest in the Plantation pipeline; (7) Mobil's interest in TAPS; (8) the terminal and retail operations of Exxon on Guam; (9) a quality of paraffinic lubricant base oil equivalent to the amount of paraffinic lubricant base oil refined in North America that is controlled by Mobil; and (10) Exxon's jet turbine oil business. The terms of the divestitures and other provisions of the Proposed Order are discussed more fully in Section IV below.

The Commission's decision to issue the Complaint and enter into the Agreement Containing Consent Orders was made after an extensive investigation in which the Commission examined competition and the likely effects of the merger in the markets alleged in the Complaint and in several other markets, including the worldwide markets for exploration, development and production of crude oil; markets for crude oil exploration and production in the United States and in parts of the United States; markets for natural gas in the United States; markets for a variety of petrochemical products; and markets for pipeline transportation, terminaling or marketing of gasoline or other fuels in sections of the country other than those alleged in the Complaint. The Commission has not found reason to believe that the merger would result in likely anticompetitive effects in markets other than the markets alleged in the Complaint.

The Commission conducted the investigation leading to the Complaint in coordination with the Attorneys General of the States of Alaska, California, Connecticut, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Texas, Vermont, Virginia and Washington. As a result of that joint effort, Respondents have entered into agreements with the States of Alaska, California, Delaware, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia and Washington, and the District of Columbia, settling charges that the merger would violate both state and federal antitrust laws.

The Complaint alleges in 12 counts that the merger would violate the antitrust laws in several different lines of business and sections of the country, each of which is discussed below. The analysis applied in each market generally follows the analysis set forth in the FTC and U.S. Department of Justice *Horizontal Merger Guidelines* (1997) (*''Merger Guidelines''*). The efficiency claims of the Respondents, to the extent they relate to the markets alleged in the Complaint, are small and speculative compared to the magnitude and likelihood of the potential harm, and would not restore the competition lost as a result of the merger even if the efficiencies were achieved.

A. Count I—Marketing of Gasoline in the Northeast and Mid-Atlantic

Exxon and Mobil today are two of the largest marketers of gasoline from Maine to Virginia, and would be the largest marketer of gasoline in this region after the merger, but for the remedy specified in the Proposed Order. The merging companies are direct and significant competitors in at least 39 metropolitan areas in the Northeast and Mid-Atlantic; [2] in each of these areas, and in each of the States in the Northeast and Mid-Atlantic, the merger would result in a market that is at least moderately concentrated and would significantly increase concentration in that market.[3] Nineteen of these 39 metropolitan areas would be highly concentrated as a result of this merger.[4] On average, the four top firms in each metropolitan area would have 73% of sales; the top four firms in the Northeast and Mid-Atlantic as a whole (Exxon Mobil, Motiva,[5] BP Amoco, and Sunoco) would on average have 66% of each of these metropolitan areas.

The Complaint alleges that the marketing of gasoline is a relevant product market, and that metropolitan areas and areas contained within them are relevant geographic markets. The Commission used metropolitan statistical areas (''MSAs'') as a reasonable approximation of geographic markets for gasoline marketing in *Shell Oil Co.*, C–3803 (1998), and *British Petroleum Co.*, C–3868 (1999). As described below, the evidence in this investigation suggests that pricing and consumer search patterns may indicate smaller geographic markets than MSAs as defined by the Census Bureau. To that extent, using MSAs or counties to define geographic markets likely understates the relevant levels of concentration.[6]

The Commission has found reason to believe that the merger would

[2] Hartford, New Haven-Bridgeport-Stamford-Waterbury-Danbury, New London-Norwich, CT; Dover, Wilmington-Newark, DE; Washington, DC; Bangor, Lewiston-Auburn, Portland, ME; Baltimore, MD; Barnstable-Yarmouth, Boston-Worcester-Lawrence-Lowell-Brockton, MA; Atlantic-Cape May, Bergen-Passaic, Jersey City, Middlesex-Somerset-Hunterdon, Monmouth-Ocean, Newark, Trenton, Vineland-Millville-Bridgeton, NJ; Albany-Schenectady-Troy, Duchess, Nassau-Suffolk, New York, Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Philadelphia, Reading, Scranton-Wilkes Barre-Hazelton, State College, York, PA; Providence-Warwick-Pawtucket, RI; Norfolk-Virginia Beach-Newport News, Richmond-Petersburg, VA; Burlington, VT. These areas are defined, variously, as ''Metropolitan Statistical Areas'' (''MSAs''), ''Primary Metropolitan Statistical Areas'' (''PMSAs''), and ''New England County Metropolitan Areas'' (''NECMAs'') by the Census Bureau.

[3] The Commission measures market concentration using the Herfindahl-Hirschman Index (''HHI''), which is calculated as the sum of the squares of the shares of all firms in the market. Merger Guidelines § 1.5. Markets with HHIs between 1000 and 1800 are deemed ''moderately concentrated,'' and markets with HHIs exceeding 1800 are deemed ''highly concentrated.'' Where the HHI resulting from a merger exceeds 1000 and the merger increases the HHI by at least 100, the merger ''potentially raise[s] significant competitive concerns depending on the factors set forth in Sections 2–5 of the Guidelines.'' *Merger Guidelines* § 1.51.

[4] Hartford, New London-Norwich, CT; Dover, Wilmington-Newark, DE; Washington, DC; Bangor, Portland, ME; Barnstable-Yarmouth, MA; Bergen-Passaic, Jersey City, Monmouth-Ocean, Trenton, NJ; Albany-Schenectady-Troy, Newburgh, NY; Allentown-Bethlehem-Easton, Altoona, Johnstown, State College, PA; Burlington, VT. In each of these MSAs, the increase in concentration exceeds 100 HHI points. ''Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that factors set forth in Sections 2–5 of the *Guidelines* make it unlikely that the merger will create or enhance market power or facilitate its exercise, in light of market concentration and market shares.'' *Merger Guidelines* § 1.51.

[5] Motiva LLC is the refining and marketing joint venture between Shell Oil Co., Texaco Inc. and Saudi Aramco, and sells gasoline under the ''Shell'' and ''Texaco'' names in the Eastern United States. Equilon LLC, a refining and marketing joint venture between Shell and Texaco, sells gasoline under the ''Shell'' and ''Texaco'' names in the Western United States.

[6] Exxon and Mobil compete in at least 134 counties in 39 MSAs in the Northeast and Mid-Atlantic; 61 of those counties are highly concentrated with significant increases in concentration; 56 are moderately concentrated with significant increases in concentration; and in only five counties (if defined as geographic markets) would the merger not result in increases in concentration exceeding *Guidelines* thresholds. *See FTC v. PPG Industries, Inc.*, 798 f.2d 1500, 1505 (D.C. Cir. 1986) (use of data in broader market to calculate market concentration is acceptable where market of concern would be more concentrated).

significantly reduce competition in the moderately and highly concentrated markets that would result from this merger. A general understanding of the channels of trade in gasoline marketing is necessary to understand the Commission's analysis of the competitive issues and of the Proposed Order. Gasoline is sold to the general public through retail gas stations of four types: (1) Company-operated stores, where the branded oil company owns the site and operates it using its own employees; (2) lessee dealer stores, where the branded company owns the site but leases it to a franchised dealer; (3) open dealers, who own their own stations but purchase gasoline at a DTW price from the branded company; and (4) ''jobber'' or distributor stores, which are supplied by a distributor.

Branded oil companies set the retail prices of gasoline at the stores they operate, and sometimes set those prices on a station-by-station basis. Lessee dealers and open dealers generally purchase from the branded company at a delivered price (''dealer tank wagon'' or ''DTW'') that the branded supplier likewise might set on a station-by-station basis. In Northeast and Mid-Atlantic, DTW prices charged by Exxon, Mobil and their major competitors are typically set using ''price zones'' established by the supplier. Price zones, and the prices used within them, take account of the competitive conditions faced by particular stations or groups of stations. There might be 10 or more price zones established by an individual oil company in a metropolitan area.

Distributors or jobbers typically purchase branded gasoline from the branded company at a terminal (paying a terminal ''rack'' price), and deliver the gasoline themselves to jobber-supplied stations at prices or transfer prices set by the distributor.[7]

In much of the Northeast and Mid-Atlantic, Exxon, Mobil and their principal competitors (Motiva, BP Amoco, and Sunoco) use delivered pricing and price zones to set DTW prices based on the level of competition in the immediately surrounding area. These DTW prices generally are unrelated to the cost of hauling fuel from the terminal to the retail store. Gasoline is a homogeneous product, and retail prices are observable (wholesale prices and retail sales volumes are also frequently known to firms in the industry). By monitoring the retail prices (and volumes) of their competitors in the immediate area, branded companies can and do adjust their DTW prices in order to take advantage of higher prices in some neighborhoods, without having to raise price throughout a metropolitan area as a whole.

The use of price zones in the manner described above indicates that these competitors set their prices on the basis of their competitors' prices, rather than on the basis of their own costs. This is an earmark of oligopolistic market behavior. Thus, Exxon, Mobil and their principal competitors have some ability to raise their prices profitably, and have a greater ability to do so when they face fewer and less price-competitive firms in highly local markets. The effects of oligopolistic market structures (where firms base their pricing decisions on their rivals' prices, and recognize that their prices affect their sales volume) have been recognized in this industry. *See Petroleum Products Antitrust Litigation*, 906 F.2d 432, 443, 444 (9th Cir. 1990) (examining California gasoline market from 1968 to 1973), *cert. denied sub nom. Chevron Corp.* v. *Arizona*, 500 U.S. 959 (1991):

> * * * (A)s the number of firms in a market declines, the possibilities for interdependent pricing increase substantially. In determining whether to follow a unilateral price increase by a competitor, a firm in a relatively concentrated market will recognize that, because its pricing and output decisions have an effect on market conditions and will generally be watched by its competitors, there is less likelihood that any shading would go undetected or be ignored. * * * On the other hand, the firm may recognize that the higher price (charged by its competitor) is one that would produce higher profits. It may therefore decide to follow the price increase, knowing that the other firms will likely see things the same way * * *

We recognize that such interdependent pricing may often produce economic consequences that are comparable to those of classic cartels.

Exxon and Mobil are each other's principal competitors in many of these markets, and the elimination of Mobil as an independent competitor is likely to result in higher prices.[8]

Market incumbents also use price zones to target entrants without having to lower price throughout a broader marketing area. With a large and dispersed network of stores, an incumbent can target an entrant by cutting price at a particular store, without cutting prices throughout a metropolitan area. By targeting price-cutting competitors, incumbents can (and have) deterred entrants from making significant investments in gasoline stations (which are specialized, sunk cost facilities) and thus from expanding to a scale at which the entrant could affect price throughout the broader metropolitan area.

While branded distributors historically have moderated the effects of zone pricing through arbitrage, distributors' ability to do so is increasingly limited to the Northeast and Mid-Atlantic by major branded companies' efforts to limit their distribution to direct channels, especially in major metropolitan areas. The merger would reduce interbrand competition through the elimination of one independent supplier; the Commission evaluated the effect of that reduction in interbrand competition in the context of the contemporaneous reduction in intrabrand competition that it found in these markets.

Entry appears likely to constrain noncompetitive behavior in the Northeast and Mid-Atlantic. New gas stations sites are difficult to obtain in the Northeast and Mid-Atlantic, and the evidence in this investigation suggests that entry through the construction of new stations is unlikely to occur in a manner sufficient to constrain price increases by incumbents. As in *British Petroleum Co.,* C–3868, the Commission has not seen substantial evidence that jobbers or open dealers are likely to switch to new entrants in the event of a small price increase. Therefore, the Commission has found it unlikely that a new entrant might enter a market by converting such stations in a manner that would meaningfully constrain the behavior of incumbents.

The merger is likely to reduce competition in Northeastern and Mid-Atlantic gasoline markets and could result in a price increase of 1% or more. A 1% price increase on gasoline sold in the Northeast and Mid-Atlantic (and in the Texas and Arizona markets discussed below) would cost consumers approximately $240 million annually. As described below, the Proposed Order seeks to preserve competition by requiring Respondents to divest all branded stations of Exxon or Mobil throughout the Northeast and Mid-Atlantic: (1) All Exxon branded gas

[7] The Commission has found evidence in its investigations in this industry indicating that some branded companies have experimented with rebates and discounts to jobbers based on the location of particular stations, thereby replicating the effect of price zone in the jobber class of trade.

[8] In finding reason to believe that this merger likely would reduce competition, the Commission has not, in the context of this investigation, concluded that these practices of themselves violate the antitrust laws or constitute unfair methods of competition within the meaning of section 5 of the FTC Act. Rather, evidence of market behavior provides the Commission with reason to believe that these moderately and highly concentrated markets are not fully competitive even prior to the merger, and therefore that the merger likely would reduce competition in these markets whether or not the post-merger was highly concentrated.

stations (company operated, lessee dealer, open dealer and jobber) in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and New York, and (2) all Mobil branded stations in New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia.

B. Count II—Marketing of Gasoline in Metropolitan Areas in Texas

Exxon and Mobil compete in the marketing of gasoline in several metropolitan areas in Texas, and in five of those metropolitan areas (Austin, Bryan/College Station, Dallas, Houston and San Antonio) the merger would result in a moderately or highly concentrated market. The evidence collected in the investigation indicates that market conditions in these Texas markets resemble those found in the Northeast and Mid-Atlantic, particularly in the use of delivered pricing and zone pricing to coordinate prices and deter entry. The Proposed Order therefore required Respondents to divest and assign Mobil's gasoline marketing business in these areas, as described below.

C. Count III—Marketing of Gasoline in Arizona

Mobile markets motor gasoline in Arizona. Exxon gasoline is marketed in Arizona by Tosco Corporation, which acquired Exxon's Arizona marketing assets and the businesses and the right to sell Exxon branded gasoline in 1994. Gasoline marketing in Arizona is moderately concentrated.

Pursuant to the agreement under which Exxon sold its Arizona assets to Tosco, Exxon retains the option of repurchasing the retail gasoline stores sold to Tosco in the event Tosco were to convert the stations from the ''Exxon'' brand to another brand (including another brand owned by Tosco). The merger creates the risk that competition between the merged company and Tosco (selling Exxon branded gasoline) could be reduced by restricting Tosco's incentive and ability to compete against Mobil by converting the stores to a brand owned by Tosco. The Proposed Order terminates Exxon's option to repurchase these stations.

D. Count IV—Refining and Marketing of CARB Gasoline

Exxon and Mobil both refine motor gasoline for use in California, which requires that motor gasoline used in that State meet particularly stringent pollution specifications mandated by the California Air Resources Board (''CARB,'' hence ''CARB gasoline''). More than 95% of the CARB gasoline sold in California is refined by seven firms (Chevron, Tosco, Equilon, ARCO, Exxon, Mobil and Ultramar Diamond Shamrock), all of which operate refineries in California. Those seven firms also control more than 90% of retail sales of gasoline in California through gas stations under their brands.

The Complaint alleges that the refining and marketing of CARB gasoline is a product market and line of commerce. Motorists of gasoline-fueled automobiles are unlikely to switch to other fuels in response to a small but significant and nontransitory increase in the price of CARB gasoline, and only CARB gasoline may be sold for use in California. As described below, the refining and marketing of gasoline in California is tightly integrated; refiners that lack marketing in California, and marketers that lack refineries on the West Coast, do not effectively constrain the price and output decisions of incumbent refiner-marketers.

California is a section of the country and geographic market for CARB gasoline refining and marketing because the refiner-marketers in California can profitably raise prices by a small but significant and nontransitory amount without losing significant sales to other refiners. The next closest refineries, located in the U.S. Virgin Islands and in Texas and Louisiana, do not supply CARB gasoline to California except during supply disruptions at California refineries, and are unlikely to supply CARB gasoline to California in response to a small but significant and nontransitory increase in price because of the price volatility risks associated with opportunistic shipments and the small number of independent retail outlets that might purchase from an out-of-market firm attempting to take advantage of a price increase by incumbent refiner-marketers.

To a much greater extent than in many other parts of the country, the seven refiner-marketers in California own their stations, and operate through company-operated stations, lessee dealers and open dealers, rather than through distributors.[9] The marketing practices described in the Northeast and Mid-Atlantic, *see* Section III.A above, are employed in California and are reinforced by the refiner-marketers' more complete control of the marketing channel. One effect of the close integration between refining and marketing in California in that refiners outside the West Coast cannot easily find outlets for imported cargoes of CARB gasoline, since nearly all the outlets are controlled by incumbent refiner-marketers. Likewise, the extensive integration of refining and marketing makes it more difficult for the few non-integrated marketers to turn to imports as a source of supply, since individual independents lack the scale to import cargoes economically and thus must rely on California refiners for their usual supply. The Commission's investigation indicated that vertical integration and the resulting lack of independent import customers, rather than the cost of imports, is the principal barrier to supply from outside the West Coast.

As measured by refinery capacity, the merger will increase the HHI for CARB gasoline refining capacity on the West Coast by 171 points to 1699, at the high end of the ''moderately concentrated'' range of the *Merger Guidelines.* The *Guidelines'* ''numerical divisions [of HHI ranges] suggest greater precision than is possible with the available economic tools and information. Other things being equal, cases falling just above and just below a threshold present comparable competitive issues.'' *Id.* § 1.5.

CARB gasoline is a homogeneous product, and (as in the Northeast and Mid-Atlantic) wholesale and retail prices are publicly available and widely reported to the industry. Integrated refiner-marketers carefully monitor the prices charged by their competitors' retail outlets, and therefore readily can identify firms that deviate from a coordinated or collusive price.

Entry by a refiner or marketer is unlikely to be timely, likely, and sufficient to defeat an anticompetitive price increase because new refining capacity requires substantial sunk costs. Retail entry is likewise difficult and costly, particularly at a scale that would support supply from an out-of-market refinery.

The merger could raise the costs of CARB gasoline substantially, a 1% price increase would cost California consumers more than $100 million annually. To remedy the harm, the Proposed Order requires the Respondents to divest Exxon's Benecia refinery, which refines CARB gasoline, and Exxon's marketing in California, as described more fully below. This divestiture will eliminate the refining overlap in the West Coast market otherwise presented by the merger.

[9] Exxon is unique among these firms in operating primarily through jobbers in California. Exxon also differs from its competitors in that a substantial portion of its refinery output is not sold under the Exxon name, but is sold to non-integrated marketers and through other channels.

E. Count V—Navy Jet Fuel on the West Coast

The U.S. Navy requires a specific formulation of jet fuel that differs from commercial jet fuel and jet fuel used in other military applications. Three refiners, including Exxon and Mobil, have bid to supply the Navy on the West Coast in recent years. The merger will eliminate one of these forms as an independent bidder, raising the likelihood that the incumbents could raise prices by at least a small amount, since other bidders are unlikely to enter the market. The divestiture of Exxon's Benecia refinery, described below, resolves this concern.

F. Count VI—Terminaling of Light Petroleum Products in Metropolitan Boston and Washington

Petroleum terminals are facilities that provide temporary storage of gasoline and other petroleum products received from a pipeline or marine vessel, and then redelivers these products from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers. Terminals provide an important link in the distribution chain for gasoline between refineries and retail service stations. There are no substitutes for petroleum terminals for providing terminaling services.

Count VI of the Complaint identifies two metropolitan areas that are relevant sections of the country (*i.e.,* geographic markets) in which to analyze the effects of the merger on terminaling: Metropolitan Boston, Massachusetts and Washington, DC. Exxon and Mobil both operate terminals that supply both of these metropolitan areas with gasoline and other light petroleum products.

The Complaint charges that the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is highly concentrated, and would become significantly more concentrated as a result of the merger. Entry into the terminaling of gasoline and other light petroleum products in each of these metropolitan areas is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects that may result from the merger.[10] Paragraphs VII and VIII of the Proposed Order therefore require Respondents to divest Mobil's Boston and Manassas, Virginia, terminals.

[10] The Commission has found reason to believe that terminal mergers would be anticompetitive on prior occasions. *E.g., British Petroleum Co.*, C–3868; *Shell Oil Co.*; *Texaco Inc.*, 104 F.T.C. 241 (1984); *Chevron Corp.*, 104 F.T.C. 597 (1984).

G. Count VII—Terminaling of Gasoline in Norfolk, Virginia

The Complaint charges that terminaling of gasoline and other light petroleum products is highly concentrated in the Norfolk, Virginia area. Exxon currently terminals gasoline in Norfolk, although Mobil does not. Mobil does terminal other light petroleum products there, and another terminaling firm, TransMontaigne, on occasion uses Mobil's wharf to receive gasoline shipments. Since TransMontaigne terminals gasoline in competition with Exxon, the merger would create or enhance Mobil's incentive to deny TransMontaigne access to Mobile's dock or increase the cost of such access, thereby limiting TransMontaigne's ability to compete against Exxon in the terminaling of gasoline. The Proposed Order remedies this effect of the merger.

H. Count VIII—Transportation of Refined Light Petroleum Products to the Inland Southeast

The inland Southeast receives essentially all of its refined light petroleum products (including gasoline, diesel fuel and jet fuel) from either the Colonial pipeline or the Plantation pipeline. These two pipelines largely run parallel to each other from Louisiana to Washington, DC, and directly compete to provide petroleum product transportation services to the inland Southeast. Mobil owns approximately 11 percent of Colonial and has representation on the Colonial Board of Directors. Exxon owns approximately 49 percent of Plantation, is one of Plantation's two shareholders, and has representation on Plantation's Board.

The proposed transaction would put the merged entity in a position to participate in the governance of both pipelines, and to receive confidential competitive information of each pipeline. Through its position as one of Plantation's two shareholders, Respondents could prevent Plantation from taking actions to compete with Colonial. As a result, the merger is likely substantially to lessen competition, including price and service competition, between the two pipelines. The Commission has twice previously recognized that control of overlapping interests in these two pipelines might substantially reduce competition in the market for transportation of light petroleum products to this section of the country. *Shell Oil Co.*, C–3803; *Chevron Corp.*, 104 F.T.C. 597, 601, 603. To prevent competitive harm from the merger, Section IX of the Proposed Order requires Respondents to divest to a third party or parties the Exxon or Mobil pipeline interest.

I. Count IX—Transportation of Alaska North Slope Crude Oil

Exxon and Mobil are two of the seven owners of the Trans Alaska Pipeline System (''TAPS''), which is the only means of transporting crude oil from the Alaska North Slope (''ANS'') to port in Valdez, Alaska. ANS crude is shipped primarily (but not exclusively) to refineries in California and Washington State. A relatively small amount of ANS crude is used within Alaska, and some ANS is sold to refineries in Asia. Exxon owns 20% of TAPS, while Mobil owns 3%. The owners of TAPS are entitled to capacity on the pipeline (which they can resell) in proportion to their ownership interests. Some TAPS owners—Mobil, in particular—have discounted their tariffs in an effort to attract additional shippers.

Exxon and Mobil both have available capacity on TAPS, *i.e.,* capacity not needed to carry their own production. Based on available capacity, the merger would increase the HHI by 268, to 5103. The merger would eliminate Mobil, a significant discounter on TAPS, as an independent firm, and reduce Exxon's incentives to discount TAPS tariffs. Entry is unlikely to defeat this price increase, since a second crude oil pipeline is highly unlikely to be built. In the absence of the Proposed Order, the merger could raise costs to purchasers of ANS crude oil by $3.5 million annually. The Proposed Order eliminates this risk by requiring the Respondents to divest Mobil's interest in TAPS.

J. Count X—Terminaling and Marketing of Gasoline and other Light Petroleum Products in Guam

Gasoline and diesel fuel are supplied into Guam, primarily from Singapore, into terminals on Guam owned by Mobil, Exxon and Shell, who are the principal marketers of gasoline on Guam. Terminal capacity is essential to light petroleum products marketing on Guam. Consumers of gasoline have no alternative but to buy gasoline on Guam. Accordingly, the relevant market to analyze the transaction is the importation, terminaling and marketing of gasoline on Guam. Mobil and Exxon are the two largest marketers on Guam. The market is highly concentrated. The merger will raise the HHI by more than 2800 points to 7400, measured by station count; Exxon Mobil would have 36 of Guam's 43 stations, or 84% of stations.

The market is subject to coordination. There are three companies, and the merger would reduce their number to two. The product is homogeneous, and prices are readily observed. New entry is unlikely to defeat an anticompetitive price increase. An entrant would require sufficient terminal capacity and enough retail outlets to be able to buy gasoline at the tanker-load level, or 350,000 barrels. Terminal capacity of this scale is unavailable in Guam. In 1988 a firm attempted to enter Guam relying on publicly available terminaling; it exited within seven years, and sold its four stations to Mobil.

Section III of the Proposed Order restores competition by requiring Respondents to divest Exxon's terminal and retail assets on Guam.

L. Count XI—Paraffinic Base Oil in the United States and Canada

Paraffinic base oil is a refined petroleum product that forms the foundation of most of the world's finished lubricants. Base oil is mixed with chemical additives and forms finished lubricants, such as motor oil and automatic transmission fluid. Most base oil is used to make products that lubricate engines, but base oil can be mixed with additives to create a large variety of finished products like newspaper ink or hydraulic fluid.[11]

Currently Exxon produces 45.9 MBD of paraffinic base oil in North America. Mobil controls 23.8 MBD of base oil production. A combined Exxon-Mobil would control 35 percent of the base oil produced in North America. As the largest base oil producer in the United States and Canada, Exxon already dominates the base oil market. With the addition of Mobil's sizeable capacity, Exxon would have even greater control over base oil pricing.

Exxon is the price leader in base oil in the United States and Canada. Other base oil producers do not expand production to take advantage of Exxon price increases. Imports do not increase when United States prices increase because transportation costs are too great. Entry into the base oil market requires large capital investments and would be unlikely to have any effect within the next two years.

The Proposed Order remedies the likely effects of the likely merger by requiring Respondents to surrender control of a quantity of base oil production equivalent to Mobil's production in the United States.

M. Count XII—Jet Turbine Oil

Jet turbine oil (also known as ester-based turbine oil) is used to lubricate the internal parts of jet engines used to power aircraft. Exxon and Mobil dominate the sales of jet turbine oil, with approximately equal shares that, combined, account for 75% of the worldwide market (defined broadly), and approach 90% of worldwide sales to commercial airlines.

Entry into the development, production and sale of jet turbine oil is not likely to occur on a timely basis, in light of the time required to develop a jet turbine oil and to obtain the necessary approvals and qualifications from the appropriate military and civilian organizations. The merger would eliminate the direct competition between Exxon and Mobil, and create a virtual monopoly in sales to commercial airlines. The Proposed Order remedies the effect of the merger by requiring Respondents to divest Exxon's jet turbine oil business.

IV. Resolution of the Competitive Concerns

On November 30, 1999, the Commission provisionally entered into the Agreement Containing Consent Orders with Exxon and Mobil in settlement of a Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Order and the Order to Hold Separate.

A. General Terms

Each divestiture or other disposition required by the Proposed Order must be made to an acquirer that receives the prior approval of the Commission and in a manner approved by the Commission, and must be completed within nine months of executing the Agreement Containing Consent Orders (except that the divestiture of the Benicia Refinery and Exxon marketing in California must be completed within twelve months of executing the Agreement Containing Consent Orders).

Respondents are required to provide the Commission with a report of compliance with the Proposed Order every sixty (60) days until the divestitures are completed, and annually for a period of 20 years.

In the event Respondents fail to complete the required divestitures and other obligations in a timely manner, the Proposed Order authorizes the Commission to appoint a trustee or trustees to negotiate the divestiture of either the divestiture assets or of ''crown jewels,'' alternative asset packages that are broader than the divestiture assets. The crown jewel for the Exxon Northeastern Marketing Assets is Mobil's marketing in the same area; for the Mobil Mid-Atlantic Marketing Assets, Exxon's marketing in the same area;[12] for the Exxon California Refining and Marketing Assets, the Mobil California Refining and Marketing Assets; for the Mobil Texas Marketing Assets, the Exxon Texas Marketing Assets; for Mobil's interest in TAPS, Exxon's interest in TAPS; for the paraffinic base oil to be sold, Mobil's Beaumont Refinery; and for Exxon's Jet Turbine Oil Business, Mobil's Jet Turbine Oil Business. In each case, the crown jewel is a significantly larger asset package than the divestiture assets.

Respondents have also agreed to the entry of an Order to Hold Separate and Maintain Assets, and the Commission has entered that Order. Under the terms of that Order, until the divestitures of the Benicia Refinery, marketing assets, base oil production and jet turbine oil business have been completed, Respondents must maintain Mobil's Northeastern, Mid-Atlantic and Texas fuels marketing businesses, Mobil's California refining and marketing businesses, and Exxon's ester based turbine oil business as separate, competitively viable businesses, and not combine them with the operations of the merged company. Under the terms of the Proposed Order, Respondents must also maintain the assets to be divested in a manner that will preserve their viability, competitiveness and marketability, and must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair the marketability or viability of the assets to be divested. The Proposed Order and the Hold Separate Order specify these obligations in greater detail.

To avoid conflicts between the Proposed Order and the State consent decrees, the Commission has agreed to extend the time for divesting particular assets if all of the following conditions are satisfied: (1) Respondents have fully complied with the Proposed Order; (2) Respondents submit a complete application in support of the divestiture of the assets and businesses to be divested; (3) the Commission has in fact approved a divestiture; but (4)

[11] Other types of base oil, including naphthenic and synthetic base oils, are not substitutes for paraffinic base oil because the users of paraffinic base oil would not switch to other base oils in the event of a small but significant, nontransitory increase in price for paraffinic base oils.

[12] The ''crown jewel'' divestiture would include the exclusive right to use the Exxon or Mobil name (as the case may be) in the pertinent States for at least 20 years. If Respondents fail to divest both the Exxon Northeast Marketing Assets and the Mobil Mid-Atlantic Marketing Assets, the Commission may direct the trustee to divest all of Exxon's marketing from Maine to Virginia.

Respondents have certified to the Commission within ten days after the Commission's approval of a divestiture that a State has not approved that divestiture. If these conditions are satisfied, the Commission will not appoint a trustee or impose penalties for an additional sixty days, in order to allow Respondents either to satisfy the State's concerns or to produce an acquirer acceptable to the Commission and the State.[13] If at the end of that additional period, the State remains unsatisfied, the Commission may appoint a trustee and seek penalties for noncompliance.

B. Gasoline Marketing in the Northeast and Mid-Atlantic

Sections IV and V of the Proposed Order are intended to preserve competition in gasoline marketing in the Northeast and Mid-Atlantic by requiring Respondents to divest to an acquirer approved by the Commission all retail gasoline stations owned by Exxon (or leased by Exxon from another person) in Maine, Massachusetts, New Hampshire, Vermont, Rhode Island, Connecticut, and New York (Proposed Order ¶ IV.A), and to assign to the acquirer of those stations all dealer leases and franchise agreements and all supply contracts with branded jobbers (¶ IV.B). The Proposed Order defines ''Existing Lessee Agreements'' and ''Existing Supply Agreements'' broadly, to include the totality of the relationship between Respondents and the dealers and distributors to be assigned.[14] Respondents will divest and assign similar interests in all Mobil stations in New Jersey, Pennsylvania, Delaware, Maryland, Virginia and the District of Columbia (¶¶ V.A–B). The assignment of dealer leases and franchise agreements is intended not to effect a material change in the rights and obligations of the parties to those leases and franchise agreements. Exxon and Mobil will divest approximately 676 owned or leased stores and assign supply agreements for 1,064 additional stores in the Northeast and Mid-Atlantic.

To effectuate the divestiture of stations and assignment of franchise agreements, Respondents shall enter into an agreement with the acquirer under which Respondents shall allow the acquirer to use the Exxon or Mobil name, as the case may be, for up to 10 years (with the possibility of further use of the name by mutual agreement thereafter) (¶¶ IV.C, V.C.). Pursuant to that agreement, the acquirer will have the exclusive right to use the Exxon or Mobil name, as the case may be, in connection with the sale of branded gasoline and diesel fuel in these states, and will have the right to accept Exxon or Mobil credit cards and to sell other Exxon or Mobil branded products (e.g., motor oil) at gas stations in these states. The acquirer will have the right to expand the Exxon or Mobil network in these states, as the case may be, by opening new stores or converting stores to the Exxon or Mobil branch (¶¶ IV.C, IV.F, V.C, V.F).

It is the Commission's contemplation that the acquirers will seek to transition the existing Exxon and Mobil networks to their own brands.[15] The Proposed Order requires the respective Exxon and Mobil packages to be divested to a single acquirer (although both packages may be divested to the same acquirer). The divestiture and assignment of large packages of retail gasoline stations should allow the acquirer the ability to efficiently advertise a brand, develop credit card and other marketing programs, persuade distributors to market the acquirer's brand, and otherwise compete in the sale of branded gasoline.

The acquirer will nonetheless be allowed to continue to offer the Exxon or Mobil name, as the case may be, to dealers and jobbers in order to allow the acquirer to preserve the network to the greatest extent feasible and to comply with the requirements of the Petroleum Marketing Practices Act, 15 U.S.C. 2801 et seq. (''PMPA''). Thus, the acquirer will be able to continue to offer Exxon or Mobil branded fuel, as the case may be, to dealers and jobbers that are today selling Exxon or Mobil branded fuel and displaying those brands. Over time, the acquirer in its business judgment may choose to convert the business it acquires to its own brand name, subject to the requirements of law or with the consent of the dealers and jobbers in question.

To effectuate the divestiture and allow the acquirers an opportunity to convert dealers and jobbers to a new brand, the Proposed Order prohibits Respondents from using the pertinent brand in the sale of gasoline for at least five (5) and as much as twelve (12) years from the date of divestiture in the region in question (i.e., Respondents will not be able to sell gasoline under the Exxon name in New York or New England, where they are divesting and assigning Exxon stations, dealers and jobbers). In addition, Respondents will be prohibited from offering to sell branded fuels for resale at divested or assigned sites for a period of seven (7) years (¶¶ IV.G, V.G).

Respondents' obligations to preserve the assets to be divested and assigned include the obligation to maintain the relationships with dealers and jobbers pending divestiture or assignment. Respondents have agreed to meet this obligation by, among other things, establishing a fund of $30 million to be paid to distributors who accept assignment of their supply agreements to the acquirer. The terms of that incentive program are set forth in Appendix A to the Proposed Order.

C. Marketing of Gasoline in Texas

To remedy the reduction in competition in the five metropolitan areas in Texas alleged in Count II of the Complaint, Paragraph VI of the Proposed Order requires Respondents to divest and assign Mobil's marketing businesses in those five metropolitan areas. Mobil's marketing assets in those metropolitan areas include interests of Mobil in partnerships with TETCO Inc. and Southland Corp. The Proposed Order requires that Respondents divest Mobil's interest in its partnership with TETCO to TETCO or to another acquirer approved by the Commission, in either event only in a manner approved by the Commission. The Proposed Order also requires Respondents to assign their Existing Supply Agreements to Assignees approved by the Commission, on the same terms as discussed with regard to Northeastern and Mid-Atlantic marketing, Part IV.B above. Respondents will divest approximately 10 owned or leased Mobil stores and assign supply agreement for Mobil's distributor-supplies stores in Texas.

D. Marketing of Gasoline in Arizona

To remedy the reduction in competition in the marketing of gasoline in Arizona alleged in Count III of the Complaint, Paragraph XI of the Proposed Order requires Exxon to surrender its right to reacquire stores sold to Tosco.

[13] The consent decree between Respondents and the States of Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Vermont and Virginia provides that a State that objects to a proposed acquirer must petition the court before which the decree is pending to rule on the suitability of the proposed acquirer. In the event such a motion is made, Respondents' time to divest under the Proposed Order is tolled until the matter is resolved.

[14] The assigned relationship does not include business format franchises for the sale of ancillary products (*e.g.,* restaurant franchises) other than gasoline and diesel fuel.

[15] For that reason, the agreement entered into between Respondents and the acquirer(s) may provide for an increasing fee for the use of the name after five years. The terms of that agreement will be subject to Commission approval.

E. Refining and Marketing of CARB Gasoline for California and Navy Jet Fuel for the West Coast

To remedy the reduction in competition in the refining and marketing of CARB gasoline and navy jet fuel alleged in Counts IV and V of the Complaint, Paragraph II of the Proposed Order requires Respondents to divest Exxon's Benicia refinery and Exxon's owned gas stations in California, and to assign Exxon's lessee contracts and jobber supply contracts in California to an acquirer approved by the Commission (¶¶ II.A, II.B). The divestiture of Exxon's Benicia refinery, with Exxon's California marketing, will not significantly reduce the amount of gasoline available to non-integrated marketers, since the refinery likely will continue to produce that gasoline and need outlets for its sale. Respondents will divest approximately 85 owned or leased Exxon stores and assign supply agreements for approximately 275 additional stores in California.

As part of its divestiture of the refinery, Respondents shall (at the acquirer's option) enter into a supply contract with the acquirer for a ratable quantity of Alaska North Slope (''ANS'') crude oil up to 100 thousand barrels per day (an amount equivalent to the refinery's historic usage). Exxon is one of the three principal producers of ANS crude oil (the other two are BP Amoco and ARCO).

The divestiture and assignment of the Exxon stations is generally under the same terms as described regarding the Northeast and Mid-atlantic, see Section IV.B above, except that in four PMSAs (San Francisco, Oakland, San Jose and Santa Rosa) Respondents will terminate their dealers' contracts and divest the real estate to the acquirer without authorizing the acquirer to use the Exxon name. Because Mobil does not market branded gasoline in these PMSAs, Exxon can effectuate a ''market withdrawal'' in these MSAs under the PMPA, 15 U.S.C. 2801 *et seq.*

In considering an application to divest and assign Exxon's California refining and marketing businesses to an acquirer, the Commission will consider the acquirer's ability and incentive to invest and compete in the businesses in which Exxon was engaged in California. The Commission will consider, *inter alia,* whether the acquirer has the business experience, technical judgment and available capital to continue to invest in the refinery in order to maintain CARB gasoline production even in the event of changing environmental regulation.

F. Count VI—Terminaling of Light Petroleum Products in Metropolitan Boston and Washington

To remedy the reduction of competition in terminaling of light petroleum products in metropolitan Boston and Washington, Paragraphs VII and VIII require Respondents to divest Mobil's East Boston, Massachusetts, and Manassas, Virginia, light petroleum products terminals, thereby eliminating the effect of the merger in these markets.

G. Count VII—Terminaling of Light Petroleum Products in the Norfolk, Virginia Area

To remedy the reduction of competition in terminaling of light petroleum products in metropolitan Norfolk, Virginia, Paragraph IX requires Respondents to continue to offer TransMontaigne access to Mobil's wharf on the same terms as have been offered historically, for as long as Respondents own the wharf.

H. Count VIII—Transportation of Light Petroleum Products to the Inland Southeast

To remedy the reduction of competition in transportation of light petroleum products to the inland Southeast, the Proposed Order requires Respondents to divest either Exxon's interest in Plantation or Mobil's interest in Colonial, and, pending divestiture, not to exercise their voting rights in connection with ownership or board representation on Colonial, thereby eliminating the effect of this merger in this market.

I. Count IX—Transportation of Crude Oil from the Alaska Slope

To remedy the reduction of competition in transportation of crude oil from the Alaska North Slope to Valdez, Alaska, and intermediate points, Paragraph X of the Proposed Order requires Respondents to divest Mobil's interest in TAPS (including Mobil's interest in terminal storage at Valdez and, at the acquirer's option, Mobil's interest in the Prince William Sound Oil Spill Response Corporation), thereby eliminating the effect of this merger in this market.

J. Count X—Importation, Terminaling and Marketing of Light Petroleum Products in Guam

To remedy the reduction in competition in the importation, terminaling and marketing of light petroleum products in Guam, Paragraph III of the Proposed Order requires Respondents to divest Exxon's terminal and marketing in Guam. Essentially all of Exxon's gasoline marketing in Guam consists of approximately 11 company-operated retail gasoline stores, which can be divested without the right to use the Exxon's brand. The Proposed Order therefore does not provide for the use of the ''Exxon'' brand in Guam. The Proposed Order does provide that the divestiture of the terminal include Exxon's rights in its joint terminaling arrangements with Shell and, at the acquirer's option, Exxon's liquefied propane gas (''LPG'') storage facilities. The divestiture would thereby eliminate the effect of this merger in this market.

K. Count XI—Paraffinic Base Oil

The Proposed Order requires Respondents to relinquish control of an amount of base oil equivalent to the amount controlled by Mobil, in order to remedy the effect of combining Exxon's and Mobil's base oil production. First, Respondents must offer to change several terms in Mobil's contract with Valero, in order to relinquish control over Valero's base oil production. The terms Respondents must offer are confidential, and are contained in a confidential appendix to the order.

Second, Respondents must enter into a long-term supply agreement (or agreements) with not more than three firms to supply those firms with an aggregate of 12 MBD of base oil from the merged firm's three refineries in the Gulf Coast area. The purchaser(s) of this base oil would purchase this base oil for ten years, under a price formula agreed to by the parties (and approved by the Commission) that is not tied to a United States base oil price (*e.g.,* the formula might be tied to a benchmark price for crude oil). The purchaser(s) could use the base oil or resell it. Since the price term will be unrelated to any U.S. base oil price, Respondents would not be able to influence the price of this base oil. This sales agreement would put the purchaser(s) in the same position as competing base oil producers.

By changing Mobil's contract with Valero and entering into a Gulf off-take agreement, Mobil's share of the base oil market will effectively be given to Valero and some new entrant(s) in base oil market or other suitable acquirers. The status quo in the base oil market will be maintained.

If Respondents do not offer the aforementioned terms to Valero within six months and do not enter into base oil supply contracts with suitable entities within nine months, they must divest Mobil's Beaumont, Texas refinery.[16]

[16] A divestiture of Mobil's Beaumont refinery would give the acquirer six percent of North

Continued

L. Count XII—Jet Turbine Oil

To remedy the effects of the merger in the market for jet turbine oil, the Proposed Order requires Respondents to divest Exxon's jet turbine oil business. The Proposed Order defines Exxon's jet turbine oil business, which must be divested, to include, among other things, an exclusive, perpetual license to use identified Exxon patents in the field of jet turbine oil, other intellectual property, research and testing equipment, and Exxon's jet turbine oil manufacturing facility at Bayway, New Jersey.

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. The commission, pursuant to a change in its rules of practice, has also issued its complaint in this matter, as well as the Offer to Hold Separate. Comments received during this sixty day comment period will become part of the public record. After sixty days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make final the agreement's Proposed Order.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

American base oil production and complete control of a low-cost base oil refinery. The buyer would be free to make any capital investments to expand capacity it chose to make. The Commission does not believe, on the facts of this investigation, that a divestiture of the refinery is strictly necessary to maintain competition in the paraffinic base oil market. The Commission might normally believe that divestiture of a refinery was necessary in order to allow the acquirer to have the ability to expand production and develop new products. However, the current trend toward producing higher grade based oils for use in finished products that need to be replaced less often (i.e., new products that significantly reduce drain intervals), suggests that the demand for base oil is likely to contract, making the need for expansion less significant on the particular facts here.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–31563 Filed 12–3–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR)

Guidelines for Videotaped Documentation of Episodes of Medical Care

AGENCY: General Services Administration.

ACTION: Guidelines for Videotaped Documentation of Episodes of Medical Care.

SUMMARY: The members of the Interagency Committee on Medical Records (ICMR) voted to approve the following guidelines which we recommend for adoption throughout the federal health care system:

Videotapes are not part of the medical record. When an episode of health care is to be documented by videotape (*e.g.,* surgical procedures, medical evaluation, or telemedicine consultation), the patient must provide written consent for the taping (unless the consultation is for the documentation of abuse or neglect). Consent should be done if the person can be identified. The episode of care should be documented in accordance with standard operating procedures (official written and/or electronic records). The videotape should be erased after standard documentation is complete, unless the videotape is required for a specified interval for a specific reason (*e.g.*, documentation of procedures in preparation for board certification, or documentation of abuse/neglect). The provider should indicate in final documentation whether or not the image was erased, or where the videotape will be maintained.

Exceptions to the prohibition against retaining videotapes may be permitted for cases with educational value. Tapes are not filed by any type of personal identifier. If they are, then all Privacy Act regulations should be followed. Any agency which chooses to keep such images on file for educational purposes must develop appropriate policies and standard operating procedures.

These guidelines do not apply to electronic images such as radiographs and digital photographs, for which documentation processes are already in place.

ADDRESSES: Interested persons are invited to submit comments regarding this guideline. Comments should refer to the guideline by name and should be sent to: CDR Steven S. Kerrick; National Naval Medical Center, Department of Opthamology, Bethesda, MD 20889–5000.

Dated: November 16, 1999.

CDR Steven S. Kerrick,

Chairperson, Interagency Committee on Medical Records.

[FR Doc. 99–31514 Filed 12–3–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

The inventions named in this notice are owned by agencies of the United States Government and are available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Thomas E. O'Toole, M.P.H., Acting Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop E–67, 1600 Clifton Rd., NE. Atlanta, GA 30333, telephone (404) 639–6270, email tto@cdc.gov. Please note that a signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

System and Method for Distributed Data Storage and Update in a Computer Network

The invention discloses a system for distributed storage and maintenance of records in a network of computer nodes. A computer user creates a record at a node of the network; this becomes the control node, or home system. This user specifies a list of recipients containing the nodes that maintain a current copy of the record. The user also specifies a mesh, which includes a subset of the

nodes on the recipient list that the control node authorizes to modify the record and to distribute the modified record to the nodes on the recipient list. The user can instruct the control node to exercise various control powers that the other nodes do not have over the record.

Inventor: H. Larry Blumen
Application # 09/373,343
Tech I.D. # I–036–98/0

Synthetic Peptides Immunoreactive with Hepatitis A Virus Antibodies

The invention discloses synthetic peptides immunoreactive with hepatitis A virus (HAV) antibodies. The peptides are useful as laboratory reagents to detect or quantify HAV antibodies in biological samples and clinical or research-based assays. They are also useful for inducing an immune response to HAV when administered to a human or animal. The peptides contain antigenic epitopes, the major structural capsid polypeptides, or non-structural polypeptides of HAV. They also contain one or more molecules of the amino acid glutamine at the carboxyl end of the peptide, which enhances immunoreactivity and immunogenicity.

Inventor: Fields et al.
Application # 60/144,412
Tech I.D. # I–015–98/0

Methods and Compositions for Detecting Larval Taenia solium

The invention relates to compositions and methods for diagnosing cysticercosis. More specifically the invention discloses compositions and methods for the detection, the diagnosis and treatment of *T. solium* infection, commonly referred to as the pork tapeworm. It provides the nucleotide and amino acid sequences of the antigenic polypeptides TS–14, TS–18 and TSRS–1. The compositions contain antigenic polypeptides of larval origin. These polypeptides are useful as research tools for studying *T. solium* and as reagents in assays for the detection of *T. solium* antibodies in a biological sample.

Inventor: Tsang, et al.
Application # 60/147,318
Tech I.D. # I–035–98/0

Method for Characterization of Rock Strata in Underground Mining Operations

The invention discloses a method and system for determining the relative strength and classification of rock strata during drilling operations for use in underground mines. Neural network technology is used to classify mine roof strata in specified terms. For example, the relative strength or strength index of rock strata may be determined as a roof bolthole is being drilled. Measurements are used to compute the specific energy input and convert the data to suitably scaled features. A neural network is then used to classify the strength of the layer. The neural network can be trained using data of known rock strata classifications prior to using it to classify new measurements. The system allows for detection of unsafe conditions and for appropriate warnings to be issued.

Inventor: Walter Utt
Application # 60/143,777
Tech I.D. # I–017–98/0

Methods and Compositions for Diagnosing Rochalimaea henselae and Rochalimaea quintana Infection

The invention discloses a method of diagnosing cat scratch disease and a method of diagnosing bacillary angiomatosis in a subject by detecting the presence of *Rochalimaea henselae* in the subject. Also provided is a vaccine comprising an immunogenic amount of a nonpathogenic *Rochalimaea henselae.* The invention allows the diagnosing *Rochalimaea quintana* infection in a subject by detecting the presence of a nucleic acid specific to *Rochlimaea quintana* in a sample from the subject. A purified heat shock protein of *Rochalimaea* is also provided.

Inventor: Anderson, et al.
Application # 08/472,904
Tech I.D. # E–048–92/6

Ore Pass Level and Blockage Locator Device

The invention discloses a method of, and apparatus for, detecting level and blockages in an ore pass or other near-vertical shaft. The level and blockage detector includes a flexible metal strip in which a plurality of strain gages have been located and spaced apart from one another. A plurality of anchors secure the metal strip to the interior surface of the shaft such that the metal strip is displaced a fixed distance from the interior surface. When the ore pass fills up with bulk material, the bulk material causes the metal strip to deflect toward the interior surface of the shaft. This causes the resistance of the strain gage in the region of the deflection to change. A microcontroller cycles through each strain gage to detect the location of the blockage. When a change in the output voltage across the bridge circuit is detected, the location of the strain gage causing the change in output voltage is an indication of the presence of bulk material (ore).

Inventor: Todd Ruff
Application # 09/361,828
Tech I.D. # I–006–98/1

Method and Apparatuses for Detecting a Temperature Increase in an Electrical Insulator

The present invention provides a heat-sensitive warning device and a related method for visually detecting an increase in the temperature of the outer surface of an electrical insulator. When the temperature of the outer surface of the electrical insulator increases to a preselected temperature, a visual indication of this rise in temperature will be provided by the ejection of a spool from a heat-sensitive warning device which has been attached to the outside of the electrical insulator. The temperature at which this visual indication of electrical insulator temperature increase occurs is preferably well below an unsafe temperature for the particular electrical insulator being used so that the electrical insulator may be replaced prior to reaching this unsafe temperature.

Inventor: Arthur Hudson
Application # 09/361,008
Tech I.D. # I–016–97/1

Dated: November 29, 1999.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 99–31467 Filed 12–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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 estimate 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.

Proposed Project: Hepatitis C Among Health Care for the Homeless Program Patients—New

The Health Care for the Homeless Clinicians'' Network (HCHCN) of the National Health Care for the Homeless Council, Inc., through a cooperative agreement with the Bureau of Primary Health Care, Health Resources and Services Administration, proposes to conduct epidemiological research regarding hepatitis C. The study will be of adult homeless patients and will be conducted using laboratory tests and patient interviews. The study is designed to estimate the prevalence of lifetime hepatitis C infection among homeless adults and the rate of comorbidity of hepatitis C and hepatitis B infection, identify high-risk groups, describe health service utilization specific to hepatitis C, and assess patient knowledge and attitudes regarding hepatitis C. The participants will be recruited from eight clinics of the national Health Care for the Homeless Program.

The estimated response burden is as follows:

Respondent	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Patients	400	1	1	400
Total	400			400

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 30, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–31515 Filed 12–3–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Meeting of the National Reading Panel

Notice is hereby given of the Washington, DC area meeting of the National Reading Panel. The meeting will be held on Wednesday, December 8, 1999, from 8:00 AM to 6:00 PM and on Thursday, December 9, 1999, from 8:00 AM to 6:00 PM. The meeting location is the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007. The entire meeting will be open to the public.

The National Reading Panel was requested by Congress and created by the Director of the National Institute of Child Health and Human Development in consultation with the Secretary of Education. The Panel will study the effectiveness of various approaches to teaching children how to read and report on the best ways to apply these findings in classrooms and at home. Its members include prominent reading researchers, teachers, child development experts, leaders in elementary and higher education, and parents. The Chair of the Panel is Dr. Donald N. Langenberg, Chancellor of the University System of Maryland.

The Panel will build on the findings presented by the National Research Council's Committee on the Prevention of Reading Difficulties in Young Children. Based on these findings and the National Reading Panel's own review of the literature, the Panel will: Determine the readiness for application in the classroom of the results of these research studies; identify appropriate means to rapidly disseminate this information to facilitate effective reading instruction in the schools; and identify gaps in the knowledge base for reading instruction and the best ways to close these gaps.

The agenda for this meeting will include presentations of subgroup reports and discussions of the reports by The National Reading Panel. A period of time will be set aside at approximately 3:00 PM on Thursday, December 9 for members of the public to address the Panel and express their views regarding the Panel's mission. Individuals desiring an opportunity to speak before the Panel should address their requests to F. William Dommel, Jr., J.D., Executive Director, National Reading Panel, c/o Mr. Patrick Riccards and either mail them to the Widmeyer-Baker Group, 1825 Connecticut Avenue, NW, Fifth Floor, Washington, DC 20009, or e-mail them to patrickr@twbg.com, or fax them to 202–667–0902. Request for addressing the Panel should be received by December 6, 1999. Panel business permitting, each public speaker will be allowed five minutes to present his or her views. In the event of a large number of public speakers, the Panel Chair retains the option to further limit the presentation time allowed to each. Although the time permitted for oral presentations will be brief, the full text of all written comments submitted to the Panel will be made available to the Panel members for consideration.

For further information contact Mr. Patrick Riccards at 202–667–0901. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Patrick Riccards by December 6, 1999.

Dated: November 29, 1999.

Duane Alexander,

Director, National Institute of Child Health and Human Development.

[FR Doc. 99–31582 Filed 12–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance.

On September 22, 1999, a notice was published in the **Federal Register** (64 FR 51333–51334) that an application had been filed with the U.S. Fish and Wildlife Service (Service) by South Central Utah Telephone Association for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16

U.S.C. 1531 *et seq.*) (Act), threatened Utah prairie dog (*Cynomys parvidens*). Anticipated incidental take of this species is in conjunction with otherwise legal activities including installation of a television coaxial cable which passes through occupied Utah prairie dog habitat on private property approximately 8 miles southeast of Panguitch, Garfield County, Utah.

Notice is hereby given that on November 19, 1999, as authorized by the provisions of the Act, the Service issued an incidental take permit (permit number TE–017010) to the above-named party subject to certain conditions set forth herein. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Act, as amended.

Additional information on this permit action may be obtained by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524–5001, on weekdays between the hours of 8 AM and 4:30 PM.

Dated: November 23, 1999.

Susan E. Baker,

Regional Director, Region 6, Fish and Wildlife Service.

[FR Doc. 99–31468 Filed 12–3–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AF66

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Carrying Out the Inclusion of All Species of the Order Acipenseriformes (Sturgeon and Paddlefish) in the Appendices to CITES

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of policy.

SUMMARY: We will no longer issue or accept for import any ''pre-Convention'' certificates for caviar. A pre-Convention certificate for caviar documents that the caviar pre-dates April 1, 1998, the effective date of the listing of all previously unlisted species of the Order Acipenseriformes (sturgeon and paddlefish) in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

DATES: This policy is effective on December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2093, fax (703) 358–2280.

SUPPLEMENTARY INFORMATION: To make sure that commercial demand does not threaten the survival of wild sturgeon, the Tenth Meeting of the Conference of the Parties to CITES (COP10) adopted a proposal on June 20, 1997, to include all previously unlisted species of the Order Acipenseriformes (sturgeon and paddlefish) in Appendix II of CITES, effective April 1, 1998. Therefore, all international shipments of sturgeon and paddlefish specimens or their parts and products, including caviar, made on or after April 1, 1998, must include a valid CITES export permit, re-export certificate, or pre-Convention certificate, which shows that the CITES treaty is being followed.

We have issued pre-Convention certificates for the re-export of caviar only when we were satisfied that it was imported before April 1, 1998. We have learned from the sturgeon products industry and others that the normal shelf life for caviar is 12 months. On the effective date of this policy, the normal shelf life of any caviar imported before April 1, 1998, will have been exceeded by more than 8 months. In addition, it has become evident since April 1, 1998, that the false declaration of caviar as having been acquired before April 1, 1998, is a means of circumventing the CITES treaty. So, we will no longer issue pre-Convention certificates for caviar.

On March 12, 1999, the CITES Secretariat issued Notification to the Parties No. 1999/23, which recommends that no permits or certificates declaring pre-Convention caviar should be accepted after April 1, 1999. Consistent with that recommendation, we will no longer accept pre-Convention certificates for the importation of Appendix II sturgeon caviar into the United States.

For imports, this policy does not affect aquaculture-produced caviar or caviar harvested from the wild after April 1, 1998, which will continue to be allowed with a valid CITES export permit from the country of origin or a valid CITES re-export certificate from the country of re-export. For exports or re-exports from the United States, this policy does not affect aquaculture-produced caviar or caviar acquired from the wild after April 1, 1998, if a valid CITES permit or re-export certificate is issued and accompanies the shipment.

On October 26, 1999, we published a proposed policy [64 FR 57645] that we would no longer issue or accept for import any pre-Convention certificates for caviar. Effective [date of publication], we are going to carry out this policy.

Comments and Information Received

Comments were received from one conservation organization. This organization strongly supported the proposed policy to no longer issue or accept pre-Convention certificates for caviar.

Required Determinations

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866.

The Department of the Interior certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This policy would restrict the sturgeon industry within the United States from engaging in foreign commerce with pre-Convention caviar that is, according to industry representatives, perhaps no longer available, and if available, only in very limited quantities at greatly reduced value. We estimate that there would likely be less than 100 businesses with remaining stocks of pre-Convention caviar. Any such caviar has exceeded its normal shelf life and has decreased in value dramatically. Therefore, this policy is restricting the sturgeon industry within the United States from engaging in commerce, under an exemption of CITES, with a commodity that may no longer even be available, and if available, only in very limited quantities at greatly reduced value. Therefore, it does not appear likely that this policy will have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. It should be noted that this policy will not restrict members of the sturgeon products industry from conducting business with caviar that has been obtained after April 1, 1998. Only the availability of the pre-Convention exemption for caviar is terminated by this policy.

Similarly, this policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

This policy does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector

because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Under Executive Order 12630, this policy does not have significant takings implications for the same reason as described above under the Regulatory Flexibility Act.

Under Executive Order 13132, this policy does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment because there are no effects on State management programs.

Under Executive Order 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

This policy does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with CITES permits is covered by an existing OMB approval, and is assigned clearance No. 1018–0093, Form 3–200–27, with an expiration date of January 31, 2001. Details of the information collection requirements for CITES documentation appear at Title 50 of the Code of Federal Regulations, Section 23.15(g). The Service 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.

This policy does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. This policy is categorically excluded from further National Environmental Policy Act requirements, under Part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

Executive Order 12866 requires each agency to write regulations that are easy to understand. The one comment that we received did not include any suggestions on how to make the proposed policy easier to understand.

Under the Administrative Procedure Act (5 U.S.C. 551–553), our normal practice is to publish policies with a 30-day delay in effective date. But in this case, we are using the ''good cause'' exemption under 5 U.S.C. 553(d)(3) to make this policy effective upon publication for the following reasons: (1) We have learned in discussions we have had with the sturgeon products industry and others that the normal shelf life for caviar is 12 months, so there should no longer be available any pre-Convention caviar imported before April 1, 1998. (2) On the effective date of this policy, the normal shelf life of any caviar imported before April 1, 1998, will have been exceeded by more than 8 months, and we have learned in discussions we have had with the sturgeon products industry that this caviar would be of very low quality and may be unhealthy for consumption. (3) As a party to CITES, it is our responsibility to carry out promptly our obligations under the treaty, and we interpret our obligations to include the prompt implementation of the CITES Secretariat's prudent recommendation that no permits or certificates declaring pre-Convention caviar should be accepted after April 1, 1999. (4) Recent correspondence from the CITES Secretariat indicates that the European Union has already prohibited the trade in pre-Convention caviar. (5) We have shown the urgency of this situation by the fact that, in the proposed policy published on October 26, 1999 [64 FR 57645], the comment period was reduced from the usual 60 days to only 15 days.

Dated: November 29, 1999.

Donald J. Barry,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 99–31449 Filed 12–3–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of a Draft Environmental Impact Statement and General Management Plan for Zion National Park

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Zion National Park, Utah.

DATES: Comments on the DEIS/GMP will be accepted through February 11, 2000. Public meetings concerning the DEIS/GMP will be held at the following locations and dates: All meetings will run from 7–10 p.m.

January 6, 2000
Sharwan Smith Center, SUU, 351 W. Center Street, Cedar City, UT

January 10, 2000
Town Offices, Public Assembly Hall, 118 Lion Boulevard, Springdale, UT

January 11, 2000
Kanab City Library, 374 N. Main Street, Kanab, UT

January 12, 2000
Interagency Offices and Information Center, 345 E. Riverside Road, St. George, UT

January 13, 2000
Utah Department of Natural Resources, 1594 W. North Temple, Salt Lake City, UT

The draft also will be available for review on the Internet at *www.nps.gov/planning.*

ADDRESSES: If you wish to comment on the DEIS/GMP, you may mail your comments to the Superintendent, Zion National Park, Springdale, UT 84767–1099. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public reading copies of the DIES/GMP will be available for review at the following locations:

Office of the Superintendent, Zion National Park, Springdale, Utah 84767–1099; Telephone (435) 772–0211

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 or (303) 969–2377

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes four alternatives for managing and using Zion National Park. The plan is intended to provide a foundation to help park managers guide park programs and set priorities. The alternative that is finally chosen as the plan will guide the management of Zion National Park over the next 15 to 20 years.

The ''no-action'' alternative is a continuation of the present management course regarding the management of visitor use. Three action alternatives would create zones within the park to protect resources and provide opportunities for a range of visitor experiences. All three action alternatives limit park visitation in some backcountry areas, and all of the action alternatives call for making adjustments to the park boundary. The National Park Service's proposed action would emphasize proactive management to address impacts caused by increased visitor use. Under this alternative, overall park visitation would continue to increase, but it would be limited in certain areas. Some new visitor facilities would be built in frontcountry areas. Alternative A would provide greater opportunities for increased use of Zion. Trails would be upgraded, new routes designated, and additional picnic areas, interpretive facilities, and backcountry campsites would be provided. Alternative B emphasizes the additional protection of park resources while still providing opportunities for a range of visitor experiences. Under alternative B, the number and frequency of shuttles going from Zion Canyon Lodge to the Temple of Sinawava would be reduced, and the lodge would be converted to a research/environmental education center.

A wild and scenic river suitability/eligibility study is included in the DEIS/GMP for all of the drainages in the park and several drainages on adjacent lands managed by the Bureau of Land Management. The three action alternatives recommend the inclusion of five drainages and their tributaries in the national wild and scenic rivers system.

The DEIS/GMP evaluates the environmental consequences of the proposed action and the other alternatives on natural resources (e.g., the North Fork of the Virgin River floodplain, Virgin spinedace, Mexican spotted owl, desert bighorn sheep) visitor use and experiences (*e.g.,* the range of visitor experiences, natural sounds), and the socioeconomic environment.

FOR FURTHER INFORMATION: Contact Darla Sidles, Zion National Park, at the above address and telephone number.

Dated: November 10, 1999.

Ron Everhart,

Acting Regional Director, Intermountain Region.

[FR Doc. 99–31561 Filed 12–3–99; 8:45 am]

BILLING CODE 4310–70–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 November 27, 1999. 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 to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by December 21, 1999.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Riverside County

Garbani, Rocco, Homestead, 33555 Holland Rd., Winchester vicinity, 99001593

Santa Barbara County

Andalucia Building, 316–324 State St., Santa Barbara, 99001592

Tulare County

Sequoia Field—Visalia-Dinuba School of Aeronautics, Near jct. of Ave. 368 and Road 112, 9 mi. N of Visalia, Visalia vicinity, 99001591

CONNECTICUT

Litchfield County

Barkhamsted Center Historic District, 119, 131 Center Hill Rd.; 2,5,6,8 Old Town Hall Rd., Barkhamsted, 99001594

ILLINOIS

Iroquois County

Watseka Union Depot, South Second St., Watseka, 99001595

INDIANA

Delaware County

Carmichael, Otto, House, 900 W. Kilgore Ave., Muncie, 99001596

MICHIGAN

Branch County

Stancer Road—North Coldwater River Bridge (Highway Bridges of Michigan MPS) Stancer Rd. over N. Coldwater R., Union Township, 99001608

US–12—Coldwater River Bridge (Highway Bridges of Michigan MPS) Old US 12 over Coldwater Bridge, Coldwater, 99001609

Calhoun County

12 Mile Road— Kalamazoo River Bridge (Highway Bridges of Michigan MPS) 1 Mile Rd. over Kalamazoo R., Marshall, 99001610

23 Mile Road—Kalamazoo River Bridge (Highway Bridges of Michigan MPS) 23 Mile Rd. over Kalamazoo R., Marengo, 99001611

Cass County

Thompson Road—Air Line Railroad Bridge (Highway Bridges of Michigan MPS) Thompson Rd. over abandoned RR right-of-way, Howard, 99001612

MISSOURI

Andrew County

Walnut Park Farm Historic District, Jct. of MO 59 and MO 71, St. Joseph vicinity, 99001597

Cape Girardeau County

Big Hill Farmstead Historic District, 2246 MO PP, Jackson vicinity, 99001598

TEXAS

Orange County

Navy Park Historic District, Roughly bounded by W. Dewey Ave., Farragut St., Cooper's Gully Tract and 6th Ave., Orange, 99001600

VIRGINIA

Nottoway County

Inverness, 884 Inverness Ave., Burkeville vicinity, 99001602

Page County

Welfley—Shuler House, 449 Shipyard Rd., Shenandoah vicinity, 99001604

Powhatan County

Provost, 4801 Cartersville Rd., Powhatan vicinity, 99001603

Charlottesville Independent City Robertson, Judge William J., House, 705 Park St., Charlottesville, 99001601

Petersburg Independent City Folly Castle Historic District (Boundary Increase II), Roughly along South St. from Commerce St. to Farmer St., Petersburg, 99001605

WISCONSIN

Sheboygan County

Sheboygan Theater, 826 N. Eighth St., Sheboygan, 99001606

Winnebago County

Sherry, Henry, House, 527 E. Wisconsin Ave., Neenah, 99001607

[FR Doc. 99–31560 Filed 12–3–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Overseas Private Investment Corporation (OPIC) on December 21, 1999. This hearing is

required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on December 21, 1999, and will begin promptly at 2 p.m. Prospective participants must submit to OPIC before close of business December 14, 1999, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1100 New York Avenue, NW, 12th Floor, Washington, DC. Notices and prepared statements should be sent to Harvey Himberg, Financial Management and Statutory Review Department, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527 (e-mail at *hhimb@opic.gov* or facsimile at (202) 218–0177).

Procedure

(a) *Attendance; Participation.* The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before December 14, 1999. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) *Prepared Statements.* Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 17, 1999. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) *Duration of Presentations.* Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) *Agenda.* Upon receipt of the required notices, OPIC will prepare an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) *Publication of Proceedings.* A verbatim transcript of the hearing will be compiled. The transcript will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects which confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended (''the Act'') to hold at least one public hearing each year.

Among other issues, OPICs annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be ''taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country).''

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC reviews any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Pub. L. 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: Harvey A. Himberg, Financial Management and Statutory Review Department, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527, (202) 336–8614, by e-mail at hhimb@opic.gov, or by facsimile at (202) 218–0177.

Dated: November 30, 1999.

Richard C. Horanburg,

Office of Congressional and Intergovernmental Affairs.

[FR Doc. 99–31481 Filed 12–3–99; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–367–370 (Review)]

Color Picture Tubes From Canada, Japan, Korea, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Revised scheduling of full five-year reviews concerning the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore.

EFFECTIVE DATE: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, US International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Effective July 12, 1999, the Commission established a schedule for the conduct of the subject five-year reviews (64 FR 38690, July 19, 1999). On November 24, 1999, counsel for parties in support of the continuation of the duty orders submitted a request for an extension of the Commission's deadline for its determinations in these reviews. On November 29, 1999, counsel for parties opposed to the continuation of the duty orders and that submitted comments, indicated that they did not object to the request for an extension. Accordingly, the Commission has determined to exercise further its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B), and is hereby revising its schedule.

The revised schedule for the conduct of the subject reviews is as follows: the prehearing staff report in the reviews will be placed in the nonpublic record on January 28, 2000; the deadline for filing prehearing briefs is February 8, 2000; requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 9, 2000; the prehearing conference will be held at the US International Trade Commission Building at 9:30 a.m. on February 11, 2000; the hearing will be held at the US

International Trade Commission Building at 9:30 a.m. on February 17, 2000; the deadline for filing posthearing briefs is February 29, 2000; the Commission will make its final release of information on March 22, 2000; and final party comments are due on March 24, 2000.

For further information concerning these five-year reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 1, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–31562 Filed 12–3–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Reinstatement; Comment Request

ACTION: Notice of Information Collection Under Review; COPS Department Initial Report.

Office of Management and Budget (OMB) reinstatement approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 10, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until January 5, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001. Additionally, comments may be submitted to COPS via facsimile to 202–616–5998. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) 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;

(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.

Overview of This Information

(1) *Type of information collection.* Extension of a currently approved collection.

(2) *The title of the form/collection.* COPS Department Initial Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection.* COPS 012/01. Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Governments.

The COPS Initial Report will be mailed to all new COPS grant recipients. Recipients must complete the form within thirty days of the date of their first grant award to comply with their grant program requirements.

The COPS Department Initial Report will collect basic information about recipient's sworn personnel and the recipient's level of community policing plans and programs at the beginning of the grant period. Survey questions will allow the COPS Office to establish a baseline of each grant recipient's community policing plans and programs at the beginning of the grant period for the purpose of monitoring progress of grant recipients in implementing community policing programs and activities with their federal COPS grant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* COPS Department Initial Report: Approximately 1,600 respondents, at 1.5 hours per respondent (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection.* Approximately 2,400 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: November 30, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–31463 Filed 12–3–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Reinstatement; Comment Request

ACTION: Notice of Information Collection Under Review for Reinstatement; COPS Officer Progress Report.

Office of Management and Budget (OMB) reinstatement approval is being sought for the information collection listed below. This proposed reinstatement was previously published in the **Federal Register** on May 10, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001. Additionally, comments may be submitted to COPS via facsimile to 202–616–5998. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue NW, Washington, DC, 20250.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) 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;

(2) 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;

(3) enhance the quality, utility, 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.

The Proposed Collection is Listed Below

COPS Officer Progress Report.

(1) *Type of information collection.* Reinstatement.

(2) *The title of the form/collection.* COPS Officer Progress Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection.* Form: COPS 013/01. Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local and Tribal Government. The COPS Officer Progress Report will be mailed to all COPS grant recipients. Recipient must complete must complete the report annually following the date of the grant program requirements.

The information collected the COPS Officer Progress Report will be used to track summary data on the characteristics of officers hired with COPS funding and to monitor the progress of grantees in hiring, training, and deploying these officers into community policing. In addition, annual submission of the COPS Officer Progress Reports will assist the COPS Office in identifying recipients which may be in need of additional information or technical assistance concerning appropriate professional training and activities for officers deployed in community policing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* COPS Officer Progress Report: Approximately 11,300 respondents, reporting on an estimated number of 5 officers, at 2 hours per response (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection.* Approximately 113,000 hours.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: November 30, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–31464 Filed 12–03–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; COPS Distressed Neighborhood Process Evaluation Survey.

Office of Management and Budget (OMB) reinstatement approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 29, 1999, to allow 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written 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 the COPS Office, PPSE Division, 1100 Vermont Ave., NW, Washington, DC 20530–0001. Additionally, comments may be submitted to COPS via facsimile to 202–633–1386. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC, 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) 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;

(2) 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;

(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.

Overview of This Information Collection

(1) Type of information collection. Extension of a currently approved collection.

(2) The title of the form/collection. COPS Distressed Neighborhood Process Evaluation Survey.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: N/A. Office of Community Oriented Policing Services, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local, and Tribal Government. Agencies that have received funding under the COPS Distressed Neighborhood grant program are required to respond.

The COPS Distressed Neighborhood Process Evaluation Survey will collect basic information about recipient's hiring and deployment processes, training, plans for internal assessment and reallocation of resources. The COPS office will use the information collected to assess whether the pilot Distressed Neighborhood sites met the goal of allocating personnel resources to the neighborhoods with the greatest need for additional police presence. A comprehensive report of the sites' deployment and hiring processes, training, and perceptions of the grant will assist the COPS Office to make future funding determinations and with future program development.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: COPS Distressed Neighborhood Process Evaluation Survey: Eighteen respondents, at 1.5 hours per respondent (including record-keeping).

(6) An estimate of the total public burden (in hours) associated with the collection. Approximately 27 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: November 30, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–31465 Filed 12–3–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 29, 1999.

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 individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), 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: Mine Safety and Health Administration.

Title: Mine Operator Dust Data Cards.

OMB Number: 1219–0011.

Frequency: On occasion; Annually; Bi-monthly.

Affected Public: Business or other for-profit.

Cit/reference	Total respondents	Frequency	Total responses	Average time per response (hour)	Burden hours
70.201, 71.209, 90.209, Dust Sampling and Monitoring	1,281	Bi-Monthly	54,000	.7135	38,532
70.201(c), 71.201(c), 90.201(c), MSHA monitored Samples	1,281	On occasion	630	1.0	630
70.202(b), 71.202(b), 90.202(b), Certification	1,281	Annually	230	6.6	1,528
70.220(a), 71.220(a), 90.220(a), Status Change Reports	1,281	Annually	3,200	.50	1,600
71,300	1,281	Annually	45	2.98	134
71.301(d), Posting of Plan	1,281	Annually	6	.24	11
90.300	1,281	Annually	6	2.67	16
90.301(d)	1,281	Annually	6	.50	3
Total			58,162	.7299	42,454

Total Annualized capital/startup costs: $990,887.

Total annual costs (operating/maintaining systems or purchasing services); $2,136,598.

Description: All underground coal mine operators and certain surface coal mine operators as designated by MSHA are required to collect and submit respirable dust samples to MSHA for analysis. Pertinent information associated with identifying and analyzing these samples is submitted on the dust data cards that accompany the samples.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31502 Filed 12–3–99; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 29, 1999.

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 individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz {202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King {202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), 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.

Title: Baseline Employment Rate for Youth Opportunity Area Demonstration.

OMB Number: 1205–0373.

Frequency: One-time.

Affected Public: Individuals or households.

Number of Respondents: 8,704.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 2,176.

Total Annualized Capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Descritpion: The data collection will complete the determination of baseline and post-program youth employment rates and additional demographic characteristics of the eleven sites of the Youth Opportunity Area Demonstration.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31503 Filed 12–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 29, 1999.

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 the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King at (202) 291–5096 ext. 151 or E-Mail to King-Darrin@dol.gov. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz (202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, 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: Mine Safety and Health Administration (MSHA); Labor.

Title: Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines.

OMB Number: 1219–0119 Extension.

Frequency: On Occasion, Annual.

Affected Public: Business or other for-profit.

Number of Respondents: 199.

Estimated Time Per Respondent: 0.24 hours.

Total Burden Hours: 56,339.

Total Annualized Capital/Startup Costs: $45,094.

Total Annual Costs (operating/maintaining systems or purchasing services): $617.238.

Description: Mandates safety requirements in three major areas of concern: diesel engine design and testing requirements; safety standards for the maintenance and use of equipment; and exhaust gas sampling provisions to protect miners.

Agency: Employment and Training Administration.

Title: Title 29 CFR Part 29—Labor Standards for Registration of Apprenticeship Programs.

OMB Number: 1205–0223.

Frequency: One-time.

Affected Public: Individuals and households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Section	Total respondents	Avg. time per response (minutes)	Total burden hours
29.3	110,540	15	27,635
29.6	84,435	5	7,036
29.5	2,263	120	4,526
9.7	40	5	3
29.12	30	120	60
Total	197,308	12	39,260

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Title 29 Part 29 sets forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by prescribing policies and procedures concerning registration of apprenticeship programs.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–31504 Filed 12–3–99; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Committee Management; Notice of Establishment

The Secretary of Labor has determined that the establishment of the Federal Economic Statistics Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon the Commissioner of Labor Statistics by 29 U.S.C. Sections 1 through 9. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Federal Economic Statistics Advisory Committee.

Purpose and Objective: The Committee will present advice and make recommendations to the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census (the Agencies) from the perspective of the academic community. The Committee will examine the Agencies' programs and provide advice on statistical methodology, research needed, and other technical matters related to the collection, tabulation, and analysis of Federal economic statistics.

Balanced Membership Plans: The Committee will consist of approximately 13 members, appointed by the Agencies, and normally will meet two times per year. The Committee will be balanced in its membership in terms of the technical expertise required, and will include persons with demonstrated professional and personal qualifications and experience relevant to the functions and tasks to be performed by the Committee. The Agencies will consider for membership a cross-section of interested economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields.

Duration: Continuing.

Agency Contact: Interested persons are invited to submit comments by December 21, 1999 regarding the establishment of the Committee. Such comments should be addressed to: Ausie Grigg, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212.

Signed at Washington, D.C. this 22nd day of November, 1999.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–31500 Filed 12–3–99; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the Optional Use Payroll Form Under the Davis-Bacon Act, WH–347. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 4, 2000.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The WH–347 is an optional form which may be used by contractors and subcontractors to certify payrolls, attesting that proper wage rates and fringe benefits have been paid to their employees performing work on contracts covered by the Davis-Bacon and related Acts. Contracting officials and Wage-Hour investigative staff use these payrolls to verify that legal rates are paid and as an aid in determining whether employees have been properly classified for the work they perform.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to determine a contractor's compliance with provisions of the Davis-Bacon and Related Acts and the Copeland Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Optional Use Payroll Form under the Davis-Bacon Act.

OMB Number: 1215–0149.

Agency Number: WH–347.

Affected Public: Business or other for profit; Individuals or households; Federal Government; State, local or Tribal Government.

Total Respondents: 106,960.

Frequency: Weekly.

Total Responses: 9,840,320.

Average Time per Response: 56 minutes.

Estimated Total Burden Hours: 9,200,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $354,252.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 30, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99–31501 Filed 12–3–99; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 1, 1999.

TIME AND DATE: 9:30 a.m., Thursday, January 27, 2000.

PLACE: Sutherland Moot Court Room, College of Law, University of Utah, 332 South 1400 East Front, Salt Lake City, Utah 84112–0730.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Pero* v. *Cyprus Plateau Mining Corp.,* Docket No. WEST 97–154–D (Issues include whether substantial evidence supports the judge's finding that the operator did not discriminate against Pero in violation of section 105(c).)

TIME AND DATE: The Commission meeting will commence following upon the conclusion of oral argument in *Pero* v. *Cyprus Plateau Mining Corp.,* Docket No. WEST 97–154–D, which commences at 9:30 a.m. on Thursday, January 27, 2000.

PLACE: Sutherland Moot Court Room, College of Law, University of Utah, 332 South 1400 East Front, Salt Lake City, Utah 84112–0730.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Pero* v. *Cyprus Plateau Mining Corp.,* Docket No. WEST 97–154–D (*See* oral argument listing, *supra*, for issues.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc 99–31690 Filed 12–2–99; 3:43 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–149)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that SR Technology, Inc., of Houston, Texas has applied for an exclusive patent license to practice the inventions described and claimed in U.S. Patent Nos. 4,890,918 and 5,145,227, entitled ''Docking Alignment System,'' and ''Electromagnetic Attachment Mechanism,'' respectively which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATES: Responses to this notice must be received by February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1003.

Dated: November 26, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–31530 Filed 12–3–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL TRANSPORTATION SAFETY BOARD

Amphibious Passenger Vessel Safety: A Public Forum

A public forum on amphibious passenger vessel safety sponsored by the National Transportation Safety Board will be held December 8–9, 1999, at the Memphis Marriott Hotel, 2625 Thousand Oaks Boulevard, Memphis, Tennessee. For more information, contact the Marine Division, telephone (202) 314–6682, fax (202) 314–6454 or Terry Williams, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 314–6100.

Dated: November 30, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–31452 Filed 12–3–99; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

In the matter of Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3); Confirmatory Order Modifying Post-Three Mile Island Requirements Pertaining to Containment Hydrogen Monitors

[Docket Nos. 50–269, 50–270, and 50–287; License Nos. DPR–38, DPR–47, DPR–55]

I

Duke Energy Corporation (Duke or the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of Oconee Nuclear Station (ONS), Units 1, 2, and 3, located in Oconee County, South Carolina.

II

As a result of the accident at Three Mile Island, Unit 2 (TMI–2), the NRC issued NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' in November 1980. Generic Letters 82–05 and 82–10, issued on March 17 and May 5, 1982, respectively, requested licensees of operating power reactors to furnish information pertaining to their implementation of specific TMI Action Plan items described in NUREG–0737. Orders were issued to licensees confirming their commitments made in response to the generic letters. The Confirmatory Order that was issued to Duke on March 18, 1983, required the licensee to implement and maintain the various TMI Action Plan Items, including Item II.F.1, Attachment 6 pertaining to monitoring of the hydrogen concentration in the containment following a safety injection.

Significant improvements have been achieved since the TMI accident in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potential severe accidents at nuclear power

plants. Recent insights pertaining to plant risks and severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing, and perhaps enhancing, the ability of licensees to respond to severe accidents. The NRC's efforts to understand the risks associated with commercial nuclear power plant operations more effectively and to reduce unnecessary regulatory burden on licensees and the public have prompted the NRC's decision to revise the post-TMI requirement to monitor containment hydrogen concentration.

The Confirmatory Order of March 18, 1983, imposed requirements upon the licensee to have continuous monitoring of containment hydrogen concentration provided in the control room, as described by TMI Action Plan Item II.F.1, Attachment 6. Information about hydrogen concentration supports the licensee's assessments of the degree of core damage and whether a threat to the integrity of the containment may be posed by hydrogen gas combustion. TMI Action Item II.F.1, Attachment 6 states:

> If an indication is not available at all times, continuous indication and recording shall be functioning within 30 minutes of the initiation of safety injection.

This requirement to have monitoring of the hydrogen concentration in the containment within 30 minutes following the start of safety injection has defined both design and operating characteristics for hydrogen monitoring systems at nuclear power plants since the implementation of NUREG–0737. In addition, the technical specifications of most nuclear power plants and NRC regulation 10 CFR 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors,'' require availability of hydrogen monitors.

By letter dated August 4, 1999, Duke used the ANO confirmatory order as guidance to request relief for the three Oconee units from the requirement to have indication of hydrogen concentration in the containment within 30 minutes of the initiation of safety injection. Specifically, the licensee requested that risk-informed insights be used to determine the functional requirements for monitoring of containment hydrogen concentration that would allow extending the monitoring requirement to more than 30 minutes following initiation. The basis for this request was that the additional time would allow the operators to complete their initial accident assessment and mitigation duties before redirecting their attention to the relatively longer-term recovery actions, such as actuating the hydrogen recombiners, that are not needed for at least 24 hours.

Based on the staff's evaluation of the justification provided by the licensee, and improved understanding of insights pertaining to plant risks, severe accident assessment, and emergency planning since the TMI–2 accident, the staff has concluded that the licensee's request should be approved. Giving the licensee the flexibility and responsibility for determining the appropriate time limit for establishing monitoring of containment hydrogen concentration will preclude control room personnel from being distracted from various important tasks in the early phases of accident mitigation, while allowing cognizant personnel, mostly outside the control room, to be aware of hydrogen concentration based on a risk-informed functional assessment at a reasonable time following an accident. Because the appropriate balance between control room activities and longer-term management of the response to severe accidents can best be determined by the licensee, the NRC staff has determined that the licensee may elect to adopt a risk-informed functional requirement in lieu of the current 30-minute time limit for establishing monitoring of the hydrogen concentration as imposed by the Order dated March 18, 1983, and as described by TMI Action Item II.F.1, Attachment 6 in NUREG–0737. The appropriate functional requirement is as follows:

> Procedures shall be established for ensuring that monitoring of hydrogen concentration in the containment atmosphere is available in a sufficiently timely manner to support the implementation of the Oconee Nuclear Station Emergency Plan (and related procedures) and related activities such as guidance for severe accident management. Hydrogen monitoring will be initiated based on: (1) The appropriate priority for establishing monitoring of hydrogen concentration within the containment in relation to other activities in the control room, (2) the use of the monitoring of hydrogen concentration by decision makers for severe accident management and emergency response, and (3) insights from experience or evaluation pertaining to possible scenarios that result in significant generation of hydrogen that would be indicative of core damage or a potential threat to the integrity of the containment building. Affected licensing basis documents and other related documents will be appropriately revised and/or updated in accordance with applicable NRC regulations.

The licensee's Post Accident Monitoring Instrumentation Technical Specifications and 10 CFR 50.44 require the licensee to maintain the ability to monitor hydrogen concentration in the containment. However, the details pertaining to the design and manner of operation of the hydrogen monitoring system are determined by the licensee.

III

Accordingly, pursuant to Sections 103, 104b, 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It Is Hereby Ordered* that:

NRC License Nos. DPR–38, DPR–47, and DPR–55 are modified as follows:

> The licensee may elect to either maintain the 30-minute time limit for monitoring of hydrogen in the containment, as described by TMI Action Plan Item II.F.1, Attachment 6, in NUREG–0737 and required by the Confirmatory Order of March 18, 1983, or modify the time limit in the manner specified in Section II of this Order.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extend the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, D.C. 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, to the Deputy Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Atlanta Federal Center, 23 T 85, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3415, and to Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC, attorney for the licensee. If such a person requests a hearing, that person will set forth with particularity the manner in which his interest is adversely affected by this Order and will address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order

designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing will be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above will be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV will be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 29th day of November 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–31507 Filed 12–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Unit No. 3; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its May 1, 1995, application, as supplemented October 20, 1995, and March 11, 1999, for proposed amendment to Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

The proposed amendment would have revised the facility technical specifications pertaining to the steam generator tube inspection surveillance interval, extending the interval from the current 18-month to a 24-month fuel cycle.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 27, 1995 (60 FR 58402). However, by letter dated October 5, 1999, as supplemented November 9, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 1, 1995, as supplemented October 20, 1995, and March 11, 1999, and the licensee's letters dated October 5 and November 9, 1999, that withdrew the application for license amendment.

Dated at Rockville, Maryland, this 29th day of November 1999.

For the Nuclear Regulatory Commission.

John A. Nakoski,

Senior Project Manager, Section 2 Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–31509 Filed 12–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Wednesday, December 8, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Wednesday, December 8

9:25 a.m.—Affirmation Session (Public Meeting)

a. Final Amendments to 10 CFR Parts 21, 50 & 54 & Availability for Public Comment of Draft Reg Guide DG–1081 & Draft Standard Review Plan Section 15.01. *Regarding Use of Alternative Source Terms at Operating Reactors (Tentative) (Contact: Ken Hart, 301–45–1659)

*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: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

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 it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). 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 wmh@nrc.gov or dkw@nrc.gov.

Dated: December 1, 1999.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 99–31609 Filed 12–2–99; 10:40 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:30 p.m., December 8, 1999.

PLACE: OPM Conference Center, Room 1350, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The conference center is located on the first floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council will focus on updating its annual strategic plan and calendar. The Council will also hear from Dr. Marick Masters, University of Pittsburgh, on the status of the NPC Research Project. In addition, the Council will hear a presentation on President Clinton's October 28, 1999 memorandum reaffirming Executive Order 12871—Labor-Management Partnerships.

CONTACT PERSON FOR MORE INFORMATION: Jeff Sumberg, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–2000, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–31498 Filed 12–3–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42183; File No. SR–GSCC–99–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

November 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] notice is hereby given that on August 19, 1999, the Government Securities Clearing Corporation (''GSCC'') 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 primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, GSCC will reduce the clearance fee that it charges to its netting members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC passes through to its netting members (with the exception of category 1 interdealer broker netting members engaged in blind broker repo activity) the cost to GSCC of obtaining and providing clearance services. Currently, the fee charged by GSCC to netting members to recoup its own external and internal clearance costs is $2.90 per deliver and receive obligation. The level of this fee is periodically reviewed to ensure that it equates sufficiently close to GSCC's actual expense.

Recently, the Board of Governors of the Federal Reserve System (''Federal Reserve'') lowered its Fedwire funds and securities transfer fees.[3] GSCC's clearance fee is a blended combination of the clearance charges levied upon GSCC by both its clearing banks and by the Federal Reserve Bank of New York for transfers made through the Fedwire book entry system. Internalized settlements at the clearing banks (*i.e.*, those settlements occurring between GSCC and dealers within the same clearing bank) substantially reduce the amount of Federal Reserve fees included in GSCC's blended rate. As a result, there is not a direct correlation between Federal Reserve clearance fees and GSCC's clearance fee. Nonetheless, GSCC's processing costs were lowered because of the Federal Reserve's action, and a reduction in GSCC's clearance fee is therefore warranted.

GSCC has determined that the clearance fee level now needed to offset its own clearance costs is roughly $2.75 per settlement. Thus, GSCC has determined it appropriate, effective as of October 1, 1999, to reduce GSCC's unit fee for clearance from $2.90 to $2.75. This adjusted fee reflects GSCC's ongoing commitment to effectively translate reductions in GSCC's processing costs into membership savings. The level of clearance fee will continue to be periodically monitored for appropriateness.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to GSCC because it involves a fee change which fairly reflects the costs incurred by GSCC in providing services to its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii)[5] of the Act and Rule 19b–4(f)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–99–04 and should be submitted by December 27, 1999.

For the Commission by the Division of Market regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–31529 Filed 12–3–99 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42166; File No. SR–NASD–99–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendment Nos. 1 and 2 Thereto Relating to the Establishment of the Nasdaq Order Display Facility and Modifications of the Nasdaq Trading Platform

November 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] 63 FR 63552 (November 13, 1998) (notice of schedule of fees for Federal Reserve Bank Services).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b-4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] notice is hereby given that on October 1, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by Nasdaq. On October 26, 1999, Nasdaq filed Amendment No. 1 to the proposal.[3] On October 29, 1999, Nasdaq filed Amendment No. 2 to the proposal.[4] 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

Nasdaq proposes to enhance its quotation montage by creating a new venue for the display of trading interest, called the Nasdaq Order Display Facility. Additionally, this proposed rule change would substantially modify the proposed Nasdaq National Market System (''NNMS'').[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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 my be examined at the places specified in Item IV below. Nasdaq 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

Nasdaq proposes to enhance its quotation montage and current trading platforms, SelectNet and SOES. This proposed rule change is contingent, and would expand upon Nasdaq's proposals to (1) establish agency quotations;[6] and (2) functionally integrate SOES and SelectNet that are currently pending before the Commission.[7] In particular, Nasdaq proposes the following changes.

A. New Nasdaq Order Display Facility

Under the proposal, Nasdaq will add a new display to the Nasdaq Workstation II (''NWII'') called the Nasdaq Order Display Facility, which would show the best bid/best offer in Nasdaq and two price levels away, accompanied by the aggregate size at each price level of the ''displayed'' trading interest of market makers, electronic communication networks (''ECN''), and Unlisted Trading Privilege (''UTP'') Exchanges.[8] As explained in greater detail below, Nasdaq market makers and ECN's that are NASD members (''Nasdaq Quoting Market Participants'') will be able to display their quotes/orders anonymously at these price levels in the Nasdaq Order Display Facility, which should encourage the display of greater trading interest.

B. Enhanced Electronic Access to the Best Price in Nasdaq

Under the proposal, market participants would be able to electronically access the best prices in the Nasdaq Order Display Facility using a substantially modified and enhanced version of Nasdaq's proposed NNMS trading platform. Specifically, Nasdaq would provide order delivery or automatic execution against the best prices displayed in the Nasdaq Order Display Facility based on the manner in which the market participant receiving the order participates in Nasdaq. Nasdaq would continue to offer market participants the ability to electronically negotiate transactions with specific market makers.

C. Delivery of Multiple Quotes/Orders to Nasdaq

Under the proposal, Nasdaq would allow (but not require) Nasdaq Quoting Market Participants to give the Nasdaq system multiple quotes/orders at single as well as multiple price levels. These markets participants may submit multiple agency and principal quotes/orders at multiple price levels, instead of a single quote at one price level. The proposed system will be able to accommodate the Agency Quote concept proposed in SR–NASD–99–09.[9] Nasdaq would display such trading interest on the NWII consistent with the parameters (price, anonymity/attribution) of the quotes/orders and the current market. Although Nasdaq would accept multiple quotes/orders at various price levels which may be displayed on a non-attributed basis in the Nasdaq Order Display Facility if within the top three price levels in Nasdaq, the Nasdaq Quotation Montage would display one MMID per ECN and market maker.[10] This functionality should allow Nasdaq to assist market participants with the management of their back book. Nasdaq believes that this functionality should, in turn, make it easier for ECNs to participate in automatic execution, and will assist Nasdaq Quoting Market Participants in complying with the SEC's Order Handling Rules (''Order Handling Rules'' or ''OHR''). Nasdaq also believes that this functionality will reduce the potential for the market to trade through orders that a market maker or ECN is holding in its back book.

D. Order Collector Facility

Under the proposal, Nasdaq will create an Order Collector Facility (''OCF''), which would serve as a single

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[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Assistant General Counsel, NASD Regulation, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission (October 26, 1999) (''Amendment No. 1''). In Amendment No. 1, the NASD makes technical and clarifying amendments to the proposed which are incorporated in this notice. Additionally, the NASD amended the proposed rule language to clarify that certain provisions of the proposal are contingent upon other proposals that are pending before the Commission.

[4] *See* letter from John F. Malitzis, Assistant General Council, NASD Regulation, to Richard Strasser, Assistant Director, Division, Commission (October 29, 1999) (''Amendment No. 2''). Amendment No. 2 clarifies that the Nasdaq staff has consulted the NASD Regulation staff with respect to the proposal rule change pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.

[5] *See* Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844 (April 22, 1999) (Notice for File No. SR–NASD–99–11 proposing to functionally integrate the Small Order Execution System (''SOES'') and SelectNet to become the foundation of the NNMS.) (hereafter ''SR–NASD–99–11'' or ''SOES/SelectNet Integration'').

[6] *See* Exchange Act Release No. 41128 (March 2, 1999), 64 FR 12198 (March 11, 1999) (Notice for SR–NASD–99–09 proposing to permit market makers to have a second market maker ID (''MMID'') for the purpose of separately displaying agency and proprietary quotes.) (Hereafter ''SR–NASD–99–09'' or ''Agency Quote Proposal'').

[7] *See* note 5, *above*.

[8] A ''UTP Exchange'' is an exchange that is a signatory to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''UTP Plan'' or ''Nasdaq UTP Plan''). As of September 1, 1999, there were four members of the Nasdaq UTP Plan. In addition to the NASD, the UTP Plan participants included the Boston Stock Exchange, the Chicago Stock Exchange (''CHX''), and the Philadelphia Stock Exchange. Of these, only the CHX has established an interface with the NASD/Nasdaq. The Cincinnati Stock Exchange is currently in the process of becoming a member of the UTP Plan and the Pacific Exchange has indicated its intent to commence this process.

[9] *See* note 6, *above*.

[10] If SR–NASD–99–09 is approved, however, a market maker would also be able to display one Agency Quote MMID in the Nasdaq Quotation Montage. UTP Exchanges would continue to transmit to, and display in, Nasdaq a single, two-sided quotation.

point of order entry and single point of delivery of Liability Orders and executions.[11] Specifically, to access the best-priced quotes/orders, a market participant would be required to enter an order into the OCF, which would deliver either an automatic execution or a Liability Order to the next market maker, ECN, or UTP Exchange (''Quoting Market Participant'') in the queue. The OCF would determine whether to deliver an order or an execution based on the manner in which the market participant receiving the order participates in the Nasdaq market (*e.g.,* automatic execution for market makers, automatic execution for ECNs that agree to participate in the automatic-execution functionality of the system, order delivery for ECNs that choose to take order delivery, and order delivery for UTP Exchanges). Nasdaq believes that this should ensure efficient and expeditious routing of orders and executions, while eliminating the potential for dual liability that market markers currently face in Nasdaq. The proposed changes described herein build upon those proposed in SR–NASD–99–11 and would create the next generation Nasdaq trading platform.[12] By creating the OCF as the single point of order entry and the single point of delivery of executions and orders, Nasdaq believes that the proposal should fully integrate its two current trading systems, SelectNet and SOES, from the end user's perspective.

E. Other Enhancements/Rule Changes

Other enhancements that Nasdaq is proposing to its current trading environment include the addition of an odd-lot processing facility, and the modification of current procedures that apply to a market maker's failure to update its quote after being decremented to zero (commonly referred to as ''SOESed-out-of-the-Box'' in the present system architecture).

1. Background

As an equity market, Nasdaq collects, aggregates and displays pre-trade information simultaneously to all market participants. This pre-trade information currently takes the form of a quote, which represents a single (or an aggregate of same-priced) agency or principal order(s). Nasdaq also provides trading platforms through which market participants may access the liquidity displayed in the Nasdaq marketplace.

Nasdaq believes that the manner in which it currently collects, aggregates and displays pre-trade information is not functionally optimized presently, thus limiting the efficiency of Nasdaq's execution services and increasing the relative cost of using those services. This is due, in part, to the way market participants transmit pre-trade information to Nasdaq. Presently, Nasdaq Quoting Market Participants (*i.e.*, ECNs and market makers who are NASD members) transmit quotation information to Nasdaq, which may represent multiple agency or principal orders that the participant has aggregated into a single quote, or may represent only a single agency order or principal order. When Nasdaq receives a quote, it cannot discern whether that quote represents a single order or multiple orders at one price. Also, Nasdaq Quoting Market Participants can only send Nasdaq a single, two-sided principal quote (although in the future market makers may also be able to send a single, one or two-sided Agency Quote to Nasdaq). Nasdaq believes that the current inability of Nasdaq Quoting Market Participants to submit to Nasdaq quotes or orders at multiple price levels has made compliance with the OHR [13] difficult, because participants cannot leave their limit orders with Nasdaq for display when required by SEC rules.[14] Nasdaq also believes that during fast market conditions this inability to display a customer limit order without adjusting the Nasdaq Quoting Market Participant's quote has resulted in limit orders being traded through because the Nasdaq Quoting Market Participant cannot transmit to Nasdaq quickly enough a revised quote representing such limit order.

Nasdaq believes that these developments, in turn, have led to the proliferation of ECNs, which accept multiple price levels of orders and display those orders when they become the best market in the ECN. Nasdaq believes that while this has assisted market makers in meeting their quotation and limit order display obligations under the OHR,[15] it has led to increased fragmentation of pre-trade information. Moreover, with the recent adoption of Rule 3b–16 under the Act [16] and the implementation of Regulation ATS,[17] alternative trading systems (''ATS'') that currently participate as ECNs in Nasdaq and are NASD members/broker-dealers, may now register as exchanges and directly compete for Nasdaq market share, as well as company listings. In short, Nasdaq believes that the revolutionary changes in U.S. equity markets spurred by dramatic shifts in the regulatory landscape and plummeting technology costs have introduced novel challenges to Nasdaq. Nasdaq believes that it is critical that Nasdaq be able to compete on the same terms and offer the same services as it competitors. Nasdaq believes that to do otherwise would render meaningless the concepts of fair competition among markets and equal regulation, which would be contrary to the clear mandates and proscriptions of the Exchange Act.

To address the issue of fragmentation as well as the competitive concerns, Nasdaq proposes to modify the display in the NWII and Nasdaq's trading platforms. This proposed rule change builds upon, and is contingent on the functional integration of SOES/SelectNet proposed in SR–NASD–99–11 and should result in a substantially enhanced NNMS trading platform. This proposed rule change also incorporates the concept of a market maker agency quote proposed in SR–NASD–99–09.

2. Nasdaq Order Display Facility

Today, the NWII presentation is split into two primary display components. The top portion of the NWII contains, among other things: (1) the Market Minder Window, which allows market participants to monitor price activity (inside bid/offer and last sale) of selected stocks; and (2) the Dynamic Quote Window, which shows for a particular stock the inside bid and offer, the last sale, change in price from previous close, daily high and low, volume, and the short sale arrow indicator. The bottom portion of the NWII contains the ''Nasdaq Quotation Montage.'' The Nasdaq Quotation Montage shows for a particular stock two columns (one for bid, one for offer), under which is listed the MMIDs for each registered market maker, ECN, and UTP Exchange in the stock and the corresponding quote (price and size) next to the related MMID. Nasdaq ranks the bids and offers along with the corresponding MMID in price/time priority. Accordingly, the market participant at the best bid who is first in time appears first in the montage, the

[11] For purposes of this filing, the term ''Liability Order'' shall mean an order to which an ECN, market maker, or UTP Exchange Specialist, owes a firm quote obligation under Exchange Act Rule 11Ac1–1 (''Liability Order''). *See* 17 CFR 240.11Ac1–1.

[12] *See* note 5, *above.*

[13] *See* Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[14] *See* Exchange Act Rules 11Ac1–1, 17 CFR 240.11Ac1–1 (''Firm Quote Rule'') and 11Ac1–4, 17 CFR 240.11Ac1–4 (''Limit Order Display Rule'').

[15] *See id.*

[16] 17 CFR 240.3b–16.

[17] *See* Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) (''Regulation ATS'').

market participant at the best bid (or the next best bid) who is next in time is ranked second, and so forth.

Market makers are required to submit a two-sided principal quote,[18] and ECNs that participate in Nasdaq may submit a one or two-sided quote.[19] UTP Exchanges that have an interface with Nasdaq are required under the UTP Plan to submit to Nasdaq to two-sided quote, which represents the exchange specialist's best quote in the stock at issue. While a market maker's quoted price and size is attributed to the market maker by the corresponding MMID, this may not represent the market maker's best price if the market maker has placed a better priced order into an ECN that complies with the Display Alternative in Exchange Act Rule 11Ac1–4.[20] Accordingly, market maker may be displaying in the Nasdaq Quotation Montage a proprietary bid of $20 when the market is $20 1/8 to 20 1/4, but the market maker may be displaying in a qualifying ECN a bid of $20 1/16. The $20 1/16 quote may only be seen by subscribers of the ECN in which the market maker has placed the order and is not visible to the Nasdaq system or Nasdaq market participants unless and until $20 1/16 becomes the best bid in the ECN or the best bid price moves in Nasdaq to $20 1/16.

a. *Enhanced Display of Trading Interest.* Nasdaq proposes to add the Nasdaq Order Display Facility, which would be displayed in the top portion of the NWII. Nasdaq would retain the Nasdaq Quotation Montage and the functionality it currently provides—the display of market maker, ECN and UTP Exchange attributable quotes ranked in price/time priority. The Nasdaq Order Display Facility would display the three best price levels in Nasdaq on both the bid and offer side of the market. Each price level will be updated and will display the aggregate size of ''displayed'' trading interest (''attributable'' and ''non-attributable,'' as explained below) at each price level.

Nasdaq Quoting Market Participants would be required to designate a quote/order as ''attributable'' or ''non-attributable,'' [21] and would be able to indicate a reserve size for the quote/order.[22] If an order is ''attributable,'' the price and size of the order would be displayed next to the Nasdaq Quoting Market Participant's MMID in the Nasdaq Quotation Montage (assuming this is the Quoting Market Participant's best-priced attributable order). Attributable orders or quotes would be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest when the price of the quote/order is within the best three price levels (on either side of the market) in Nasdaq.

Alternatively, if a Nasdaq Quoting Market Participant designates a quote/order as ''non-attributable,'' it will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest when the price of the quote/order is within the best three price levels. That order or quote would not, however, be displayed in the Nasdaq Quotation Montage next to the Quoting Market Participant's MMID. Thus, Nasdaq believes that Nasdaq Quoting Market Participants would be able to use a Nasdaq facility to display trading interest to the market anonymously, without attribution to its MMID, and still be in compliance with Exchange Act Rules 11Ac1–1 and 11Ac1–4.[23]

Market markers be required to publish in the Nasdaq Quotation Montage a two-sided quote that is attributed to its MMID. [24] Nasdaq believes, however, that the Nasdaq Order Display Facility meets the requirements of Exchange Act Rule 11Ac1–4. [25] Thus, Nasdaq believes it would be consistent with Exchange Act Rule 11Ac1–4 [26] for a Nasdaq market marker to give the system a non-attributable principal quote/order that is priced better than its attributable quote/order displayed in the Nasdaq Quotation Montage and display that non-attributable quote/order only in the Nasdaq Order Display Facility without updating its attributable quote/order in the Nasdaq Quotation Montage.[27] Nasdaq also believes it would also be consistent with Exchange Act Rules 11 Ac1–1 and 11Ac1–4 [28] for a market maker that receives a customer limit order that is priced better than the market marker's attributable quote/order in the Nasdaq Quotation Montage, to designate that limit order as non-attributable and display it only in the Nasdaq Order Display Facility. Nasdaq notes that this arrangement and treatment of the limit order must be consistent with the market maker's best execution obligations and understanding with the customer.

b. *Reserve Size.* This proposal also would permit Nasdaq market makers and ECNs to use reserve size. Reserve size, under the proposal, would work in virtually the same manner as proposed in SR–NASD–99–11.[29] Specifically, reserve size could apply to a market maker's principal or agency quote, and the market maker would be required to display (either as attributable or non-attributable) 1,000 shares. Reserve size would replenish displayed size (attributable or non-attributable) by at least 1,000 shares (or a greater default amount) once displayed size is decremented to zero. Reserve size along with displayed (both attributable and non-attributable) size would be accessible through Nasdaq's trading

[18] *See* NASD Rule 4613.

[19] *See* NASD Rule 4623.

[20] Exchange Act Rule 11Ac1–4 requires an OTC market maker to make publicly available any superior prices that the market maker privately quotes through an ECN. A market maker may comply with this requirement by changing its quote to reflect the superior price or, in the alternative, may deliver better priced orders to an ECN provided that the ECN meets the ''Display Alternative'' in Exchange Act Rule 11Ac1–4(c)(5). The Display Alternative states that a market maker is not required to update its quote in Nasdaq if it is displaying a better-priced order in an ECN if the ECN disseminates these priced orders to the public quotation system and provides broker-dealers equivalent access to these orders. Nasdaq market makers currently utilize SelectNet to access ECN quotes. Additionally, other investor protection rules, such as the *Manning* Rule, will continue to apply to this facility.

[21] A Nasdaq Quoting Market Participant must designate a quote/order as either attributable or non-attributable. For purposes of this filing, both attributable and non-attributable quotes/orders are considered ''displayed orders'' since they are displayed in the Nasdaq system and have the potential for being viewed in the NWII by market participants.

[22] The ''reserve size'' feature allows a Nasdaq market maker on ECN, or a customer of either to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

[23] 17 CFR 240.11Ac1–1 and 17 CFR 11Ac1–4.

[24] *See* proposed NASD Rule 4613(d). Additionally, Nasdaq will display in the Nasdaq Quotation Montage only one MMID (two sided) and one Agency MMID (one or two sided) for each market maker and one MMID per ECN. *See* proposed NASD Rule 4707.

[25] 17 CFR 240.11Ac1–4.

[26] *Id.*

[27] Nasdaq believes that the Nasdaq Order Display Facility meets the requirements of the Display Alternative, Exchange Act Rule 11Ac1–4(c)(5). That is, if a market maker displays in the Nasdaq Order Display Facility a non-attributable principal or agency interest that is priced better than its attributable quote/order in Nasdaq Quotation Montage, this would be consistent with Exchange Act Rule 11Ac1–4(c)(5) because the better-priced non-attributable quote/order will be displayed in Nasdaq once it is at the best bid/best offer or two price levels away. Additionally, the prices in the Nasdaq Order Display Facility will be accessible through Nasdaq's traditional execution systems, thus providing equivalent access to the quote. Nasdaq notes that if a market marker were to place an order into a qualifying ECN, that order would not be displayed in Nasdaq until it was at the top of the ECN's file. In the proposed Nasdaq system, however, the market maker's order in the Nasdaq order Display Facility will be displayed when it is within the best three price levels on either side of the market.

The NASD believes that the Nasdaq Order Display Facility reduces fragmentation and increases transparency in that quotes/orders that might not be displayed to the market because they are in an ECN and not at the top of the ECN's book, may now be displayed in Nasdaq.

[28] 17*CFR 240.11Ac1–1 and 17 CFR 240.11Ac1–4.*

[29] *See* proposed NASD Rule 4710. Also *see* note 5, *above.*

platform. Reserve size, however, would not be displayed in either the Nasdaq Order Display Facility or the Nasdaq Quotation Montage. As described in the Order Execution Algorithm section of this filing, Nasdaq would access reserve size after all displayed size at a given price in the Nasdaq market is exhausted.

Next, a special MMID (to be named in the future, but for purposes of this filing ''SIZE'') that represents the aggregate size of the best-priced non-attributable bid quotes/orders and separately the best-priced non-attributable offer quotes/orders in the system would be displayed in the Nasdaq Quotation Montage, along with the other MMIDs for the Quoting Market Participants displaying attributable size. There would be one ''SIZE'' MMID for the bid and the offer side of the market.[30] Nasdaq believes that the ''SIZE'' MMID is necessary to properly calculate and disseminate the Nasdaq best bid and best offer (''BBO'') along with the accompanying market center over Nasdaq Level 1 Service and National Quotation Data Service (''NQDS'').[31]

Nasdaq would also provide a ''Summary Scan'' functionality as part of the Nasdaq Order Display Facility. The Summary Scan feature would be a query-only functionality that would provide a look at the total displayed size (attributable and non-attributable) for all levels below the three price levels in the Nasdaq Order Display Facility. The Summary Scan would anonymously display interest (attributable and non-attributable) at each price level on both sides of the market, but would not be dynamically updated.

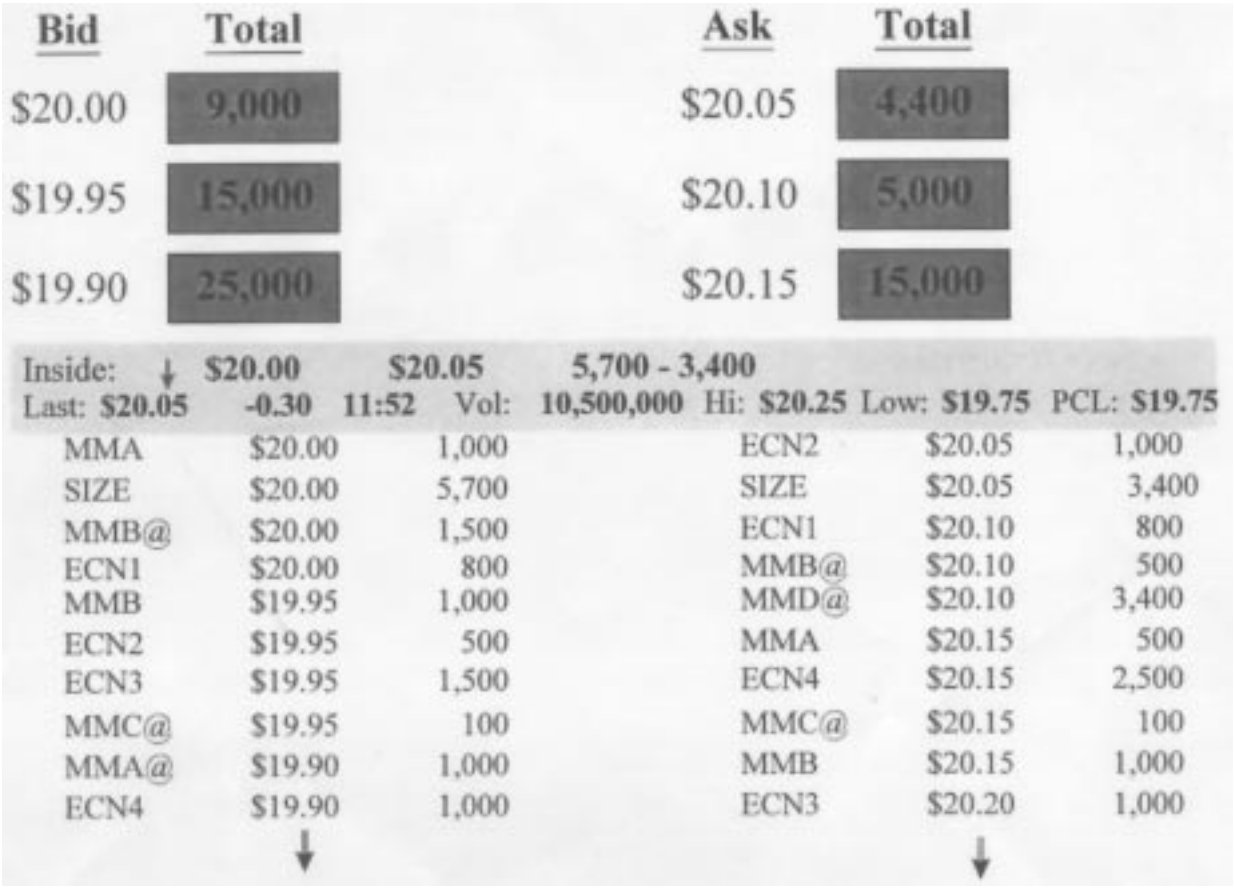
In essence, under the proposal the Nasdaq Quotation Montage would represent all trading interest that a Quoting Market Participant wishes to attribute to its MMID. This section may be viewed as a way for Quoting Market Participants to advertise their trading interests, which may be at the inside market or one or more ticks away. This section should be useful for market participants who wish to trade a block or large size at a price that is one or more ticks away from the market. The Nasdaq Order Display Facility would allow Nasdaq Quoting Market Participants to display size to the market anonymously, which should minimize certain risks that a market participant encounters when large size is attributable to its MMID. By allowing for the anonymous display of size to the market and by providing a facility that Nasdaq believes complies with the OHR, Nasdaq believes that the Nasdaq Order Display Facility should encourage Nasdaq Quoting Market Participants to show greater size and thereby increase transparency. Finally, Nasdaq believes that reserve size should benefit the market by allowing Nasdaq Quoting Market Participants to show the Nasdaq system back-book trading interest, but not the market in general. This feature should minimize potential market impact of displaying very large size, while enhancing liquidity since reserve size will be electronically accessible.

Below is a schematic of the proposed modified display of the NWII.[32]

[30] The aggregate size of the best bid/best offer displayed in the Nasdaq Order Display Facility will equal the sum of the individual sizes of the MMIDs at the best bid/best offer displayed in the Nasdaq Quotation Montage and the size of the SIZE MMID when that MMID is at the best bid/best offer.

[31] Nasdaq Level 1 Service provides the inside bid/offer quotations and identifies the market center at the best bid/best offer based on an algorithm set out in the Nasdaq UTP Plan. *See* NASD Rule 7010 and Nasdaq UTP Plan, Section VI, Paragraph C, Subparagraph 1. NQDS provides individual market maker quotes, Level 1 Service, and last sale information. *See id.* The SIZE MMID will be used in determining the best bid/best offer and corresponding market center for purposes of Level 1 and UTP.

[32] The description of the proposed modified display of the NWII that follows was submitted by the NASD pursuant to a telephone conversation between John F. Malitzis, Assistant General Counsel, NASD Regulation and Marc McKayle, Attorney, Division, Commission on November 19, 1999.



In the above schematic, there are 9,000 shares at the inside bid of $20. The Nasdaq Quotation Montage shows three Nasdaq Quoting Market Participants—MMA, showing market maker A's proprietary quote, MMB@, showing market maker B's agency quote, and ECN1—with *attributable* orders/quotes having a total size of 3,300 shares. The Nasdaq Quotation Montage also shows the SIZE MMID, which is displaying *non-attributable* orders/quote with a total size of 5,700 shares. Thus, the total number of attributable and non-attributable orders/quotes at the inside bid is 9,000 shares. The system rolls up into the Nasdaq Order Display Facility (in the top portion of the NWII) the total number of attributable and non-attributable orders, and shows in the top box an aggregate of 9,000 shares at $20 (the inside bid).

At the $19.95 level on the bid side of the market, the Nasdaq Quotation Montage shows four Nasdaq Quoting Market Participants—MMB, ECN2, ECN3, and MMC@—displaying *attributable* orders/quotes having a total size of 3,100 shares. The Nasdaq Order Display Facility in the top portion of the NWII shows that there are a total of 15,000 shares at the $19.95 level, of which 3,100 are attributable orders/quotes (which are identified in the Nasdaq Quotation Montage by MMID). The remaining 11,900 shares represent non-attributable orders/quotes at the $19.95 level which are not displayed in the Nasdaq Quotation Montage; and/or attributable orders/quotes residing in the system for Nasdaq Quoting Market Participants who are displaying a superior priced attributable order/quote (*e.g.*, MMA, who is at the inside bid of $20, could also have an attributable order/quote at the $19.95 level, which is aggregated into the second box in the Nasdaq Order Display Facility, but is not displayed next to MMA's MMID unit MMA's $20 attributable order/quote is filled). There is no SIZE MMID at $19.95 because such an MMID would only display the best priced non-attributable orders/quotes, which on the bid side of the market in the above schematic are currently priced at $20 (*i.e.*, there is only one SIZE MMID for each side of the market, and it displays the best priced non-attributable orders on each side). If $19.95 became the best bid, the SIZE MMID would be displayed in the Nasdaq Quotation Montage and would show all *non-attributable* orders/quotes at that price level.

3. Order Collector Facility

To further enhance the Nasdaq trading platform, Nasdaq proposes to implement an OCF which would do the following: (1) transmit to Nasdaq multiple quotes/orders and/or quotes/orders at multiple price levels by Nasdaq Quoting Market Participants; (2) provide a unified point of entry of orders into the Nasdaq system to access quotes/orders displayed (as either attributable or non-attributable) in both the Nasdaq Order Display Facility and the Nasdaq Quotation Montage; and (3) provide a single point of delivery to Quoting Market Participants of Liability Orders, which should eliminate all potential for dual liability. Nasdaq believes that this proposed provision should substantially enhance and modify its current architectures as well as the NNMS trading platform proposed in SR–NASD–99–11, by overlaying the OCF with the enhanced architecture to create a single point of order entry and delivery for the end user.

a. *Entry of Quotes/Orders.* Nasdaq proposes to allow Nasdaq Quoting Market Participants to transmit multiple quotes/orders and quotes/orders at multiple price levels, which the system would manage and display in Nasdaq (in the Nasdaq Order Display Facility

and/or in the Nasdaq Quotation Montage) consistent with an order's/quote's parameters.

As noted previously, Nasdaq believes that Nasdaq Quoting Market Participants encounter certain difficulties in managing their books, because participants currently may only transmit a single quote (which may represent a single order or an aggregate of principal/agency interest at a single price). Nasdaq believes that, in addition to the problems Nasdaq Quoting Market Participants ace, this limitation also raises competitive concerns and limitations for Nasdaq and the services it provides.

To remedy this situation, Nasdaq proposes to allow certain Nasdaq Quoting Market Participant to give Nasdaq multiple principal and agency orders or quotes at single as well as multiple price levels.[33] Nasdaq would time stamp each quote/order upon receipt, and the time stamp will determine the quote's/order's ranking for automated execution purposes. Additionally, as noted above, a Nasdaq Quoting Market Participant would designate a quote/order as either attributable or non-attributable, and could designate a reserve size. Nasdaq will aggregate in its system all of a Nasdaq Quoting Market Participant's attributable and non-attributable quotes/orders at a particular price level, which would thereafter be disseminated into the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage. For no-attributable quotes/orders, Nasdaq would display the aggregate size of such quotes/orders in the Nasdaq Order Display Facility when the quotes/orders fall within the three top price levels (on either side of the market) in Nasdaq. For attributable quotes/orders, Nasdaq would display the aggregate size of such quotes/orders in the Nasdaq Quotation Montage, once the quote(s)/order(s) at a particular price level becomes the market maker's best attributable bid or offer in the bottom portion of the montage. (As noted previously, market makers would still only display one MMID, and possibly an agency MMID, in the Nasdaq Quotation Montage.)[34] Nasdaq Quoting Market Participants would have the option to forward their ''top of file'' as a single quote, instead of multiple quotes/orders at multiple price levels, as they do today. That is, a market maker could continue to send only its best bid/best offer to Nasdaq, and an ECN could continue to send Nasdaq only its top of file and be accessed via order delivery.

For example, assume if MMA sends Nasdaq five 1,000 share attributable buy orders at $20 and two 1,000 share non-attributable buy odes at $20, for total interest of 7,000 shares to buy at $20. Assume further than $20 becomes the best bid and MMA is alone at the inside bid. Nasdaq would aggregate all of the orders in the system and display them as follows: 7,000 shares in the Nasdaq Order Display Facility; 5,000 shares (the attributable portion) in the Nasdaq Quotation Montage next to MMA's MMID; and 2,000 (the non-attributable portion) in the ''SIZE'' MMID.

Nasdaq believes that the ability to transmit to Nasdaq multiple orders at varying prices (instead of displaying interest under a single quote) should provide many benefits to Nasdaq market makers and ECNs. First, it should ensure compliance with the OHR, and in particular the Limit Order Display and Firm Quote Rules.[35] Additionally, Nasdaq believes that it prevents any chance that a Nasdaq Quoting Market Participant, because of system delays and/or fast moving markets will miss a market because the participant is unable to quickly transmit to Nasdaq a revised quote (which may represent a limit order). Additionally, Nasdaq intends to include in the new system a ''request a cancel'' functionality. Under this feature where a Nasdaq Quoting market Participant will be required to request Nasdaq to cancel an order before the order is removed from the Nasdaq system.[36] The request to cancel feature, along with the ability to leave orders with Nasdaq, should benefit ECNs by allowing them to participate in automatic execution while minimizing the potential for double liability or taking on a proprietary position.[37]

As another benefit, when an Nasdaq Quoting Market Participant is at the best bid/best offer, Nasdaq would provide for internal matching of a Nasdaq Quoting market Participant's agency (or principal) orders against the participant's quotes/order before the order is sent into the Nasdaq system. For example, if MMA sends all of its quotes/orders to Nasdaq and is at the best bid of $20 showing (attributable and non-attributable) 4,000 shares, and the MMA sends Nasdaq a 1,000 share market sell order from one of its customers, Nasdaq would execute the market sell order against the market maker's bid, instead of sending the order to the Quoting Market Participant that otherwise would be next in the queue to receive the market sell order.

b. *Access to Displayed Quotes/Orders.* 1. *Order Entry Parameters.* Currently, to access quotes via automatic execution, a market participant may enter an order into SOES if the order is for a public customer and meets maximum order size requirements.[38] If an order is not SOES-eligible, a market participant may use SelectNet if the market participant wishes to access a quote of an ECN or UTP Exchange, or if the market participant wishes to use the negotiation features of SelectNet. Presently, SOES and SelectNet are not integrated and operate asynchronously. Notwithstanding, Nasdaq's proposal to integrate SelectNet and SOES, those systems would continue to operate on separate platforms.[39] From an end-user's perspective, a market participant would still have to operate and manage two separate systems. For example, market participants would have to first determine the type of order they wish to enter (liability versus non-liability) and/or to whom they wish to send the order (market maker, ECN, or UTP Exchange), and then decide which system (NNMS, the automated execution system, or SelectNet) into which to enter the order. In addition, the proposal to integrate the functionality of SOES and SelectNet (SR–NASD–99–11) does not entirely eliminate the potential for dual

[33] This functionality will not be available to Quoting Market Participants who are not NASD members (*e.g.,* UTP Exchanges/Non-NASD member ATSs).

[34] If a market participant has an Agency Quote, attributable quote/order or quotes/orders will be displayed once the quotes/orders at a particular price level become the market participant's best Agency Quote.

[35] *See* Exchange Act Rules 11Ac1–1, 17 CFR 240.11Ac1–1, (''Firm Quote Rule'') and 11Ac1–4, 17 CFR 240.11Ac1–4, (''Limit Order Display Rule'').

[36] If the order has already been executed or is in the process of being executed, the request to cancel may be declined.

[37] Nasdaq represents that ECNs do not currently participate in SOES because of the potential for dual liability and assuming proprietary positions. For example, if an ECN were to match orders between two subscribers and contemporaneously receive an execution from SOES against its quote, the ECN would be required to honor both the internal execution and the SOES execution, effectively requiring the ECN to take on a proprietary position. Dual liability does not arise in SelectNet because that system delivers an order (message) which can be declined if the ECN, after scanning its book, determines that the quote in Nasdaq was taken out by an internal execution. (An ECN cannot decline a SOES execution because the system delivers an execution, as opposed to an order.) Under this proposal, an ECN has the ability to give quotes/orders to Nasdaq. If an internal subscriber wanted to access an order in an ECN that is also being displayed in Nasdaq, the ECN could request a cancel before effecting the internal match. If the request to cancel were declined because the order was already executed in Nasdaq, the ECN could decline his/her internal customer and avoid dual liability.

[38] *See* NASD Rule 4730(c).

[39] *See* note 5, *above.*

liability.[40] Specifically, because UTP Exchanges needed a method of delivering Liability Orders to Nasdaq market makers, Nasdaq proposed in the SOES/SelectNet Integration to permit UTP Exchanges to send SelectNet Liability Orders to market participants that participate in the NNMS on an automatic execution basis. The OCF should eliminate all potential for double liability because it would serve as the single point of order entry and the single point of delivery of all Liability Orders (as well as Non-Liability Orders) and executions.

To access quotes in Nasdaq, order entry firms, market makers, ECNs, or UTP Exchanges, would enter either a directed or non-directed order into the OCF. The order could be of any size, up to 999,999 shares (there would be a separate odd-lot process), and would be required to indicate whether it is a buy, sell, sell short, or sell short exempt order.[40] The order would be required to be priced or be a market order.

2. Non-Directed Orders

If a market participant wishes to immediately access the best prices in Nasdaq, the market participant would be required to enter a non-directed order into the OCF. A non-directed order, is one that the market participant entering the order into the system does not send/route to a particular Quoting Market Participant. A non-directed order must be designated as a market order or a marketable limit order and will be considered a ''Liability Order'' and treated as such by the receiving market participant.[42] Upon entry, the OCF would ascertain who the next Quoting Market Participant in the queue to receive an order is and, depending on how that receiving Quoting Market Participant participates in Nasdaq (*i.e.,* automatic execution versus order delivery), the OCF would deliver either an execution or a Liability Order.[43] While market makers will continue to be required to take automatic executions via the NNMS, the OCF will accommodate ECNs that have the option, but are not required, to participate in the system's automatic execution functionality.

a. *Quote Decrementation of Non-Directed Orders.* For a Nasdaq Quoting Market Participant accepting automatic executions (*i.e.,* a market makers and ECN choosing to participate in the system's automatic-execution functionality) the system would deliver an execution up to the size displayed by the participant and, if the order has not been filled by other displayed orders, to the participant's reserve size. The system would automatically decrement the aggregate quote in the Nasdaq Order Display Facility by the size of the delivered execution, and the Nasdaq Quoting Market Participant's quote in the Nasdaq Quotation Montage if the quote/order is attributable. Displayed (attributable or non-attributable) size would be replenished from reserve size for Nasdaq Quoting Market Participants accepting automatic executions, if the participant's displayed size is decremented to zero and the market participant has reserve size. If an ECN accepts automatic executions and has its attributable quote/order exhausted to zero without updating or transmitting of another attributable quote/order to Nasdaq, Nasdaq would zero out the one side of the quote that is exhausted. If both the bid and offer size of the ECN's market were reduced to zero without the ECN updating or transmitting another attributable quote/order, the ECN would be placed into an excused withdrawal state and restored once the ECN transmitted to Nasdaq revised attributable quotes/orders. Nasdaq believes that this is necessary to ensure that Quoting Market Participants that do not provide timely executions due to equipment or other failures do not hold up the market and cause queuing of orders within the Nasdaq system.[44]

For Quoting Market Participants not participating in automatic executions—ECNs that wish to accept order delivery and UTP Exchanges that only participate in order delivery—Nasdaq would deliver an order of a size up to the participant's displayed and reserve size (if applicable). Nasdaq would automatically decrement the participant's quote by the size of the delivered order, but Nasdaq would not deliver another order to such Quoting Market Participant until the Quoting Market Participant has processed the order by providing a complete or partial fill of the order. If the Quoting Market Participant declines or partially fills the order, Nasdaq would send the order (or remaining portion thereof) back into the system for immediate delivery to the next available Quoting Market Participant. In addition, if the Quoting Market Participant declines or partially fills the order without immediately transmitting a revised quote/order at an inferior price, or if the participant fails to respond in any manner within five seconds of order delivery, Nasdaq would immediately reroute the order to the next Quoting Market Participant in the queue. For ECNs, the system would zero out the ECN's quotes/orders at that price level on that side of the market, and the ECN's quote/order would remain at zero unless the ECN transmits to Nasdaq a revised attributable quote/order or the ECN has other attributable quotes/orders in the system.[45]

b. *Quote Refresh and Revised SOESed-Out-of-the-Box Procedures.* As noted previously, market makers will be required to maintain a two-sided, attributable principal quote (other than its Agency Quote) in Nasdaq at all times. To assist with this requirement, market makers would be able to use the Quote Refresh (''QR'') functionality

[40] To eliminate the potential for dual liability (*e.g.* receipt of a SelectNet Liability Order followed immediately by the delivery of a SOES execution against a market maker's quote), Nasdaq proposed to limit SelectNet so that only non-Liability Orders could be delivered to those market participants who participate in the NNMS and are subject to automatic execution (*i.e.,* market makers and ECNs that agree to accept automatic executions). *See* SR–NASD–99–11. To send a Liability Order to a market maker, a market participant would use the NNMS system, which would route the order to the next market maker in the queue. Market participants would still use SelectNet to access quotes of ECNs that do not participate in NNMS and to direct non-Liability Orders to a particular market maker. *See* NASD Rule 4730(c).

[41] Although Nasdaq is proposing to eliminate the rule limiting the size of orders that may be entered into the NNMS, the system in the short term would only be able to deliver an execution up to 9,900 shares. However, if a market participant enters an order into the system that is eligible for automatic execution and exceeds the system size limit of 9,900, the OCF would break the order up into multiples of 9,900 shares and execute the orders as such.

[42] If a non-directed limit order is marketable when entered into the system but subsequently becomes non-marketable because of a change in the inside market, the system will hold the order for 90 seconds rather than immediately returning the order to the participant who entered it. If within that 90 seconds the order once again becomes marketable, the system will send the order to the next Quoting Market Participant in the queue. At any time within that 90 seconds, the participant who entered the order can obtain the status of the order and request a cancel of such order.

If an order is a sell short that is not exempt from NASD Rule 3350 and the market moves from an up-bid to a down-bid after the order is entered but before delivery or execution, the system will return the order to the participant who entered it. Sell-short exempt orders (*i.e.*, those entered by primary market makers) may be entered into the system for execution.

[43] For example, if MMA and ECN1 (non-automatic execution participant) are at the inside bid each displaying 1,000 shares at $20, and OE Firm A enters a market order to sell 1,000 shares, assuming that MMA is first in time priority, the OCF will deliver an execution of 1,000 shares to MMA. If another market order to sell 1,000 shares is then entered into the system, the OCF will deliver a Liability Order to ECN1. If ECN1 had opted to take automatic executions, the OCF would have delivered an execution to ECN1.

[44] If an ECN's quote/order has been zeroed out and placed into an excused withdrawal state and the ECN has non-attributable quotes/orders in Nasdaq, the system will continue to provide access to those orders from non-directed orders as described in this filing.

[45] For UTP Exchanges, Nasdaq will place the side of the quote that was being accessed, at the lowest bid or highest offer price for 100 shares.

feature of the proposed NNMS.[46] QR allows a market maker to designate a refresh size (with a default refresh size of 1,000 shares) and price (*i.e.,* a tick amount away from the price of its decremented quote) to which it wishes to refresh if its quoted size is decremented to zero. If a market maker utilizing QR but has an attributable quote/order in the system that is priced at or better than the quote/order that would be created by the QR, Nasdaq would display the better-priced attributable quote/order, not the QR-produced quote/order.[47] If a market maker is not utilizing QR and the market maker has given Nasdaq multiple attributable quotes/orders, Nasdaq would display the market maker's next best-priced attributable quote/order when its attributable quote/order is decremented to zero.

If a market maker's quote/order is decremented to zero and does not update its principal quote/order via QR, transmit a revised attributable quote/order to Nasdaq, or have another principal (*i.e.,* non-Agency Quote) attributable quote/order in the system, Nasdaq would place the market maker's quote (both sides) in a closed state for three minutes. At the end of that time, if the market maker has not voluntarily updated or withdrawn its quote from the market, Nasdaq would refresh the market maker's quote/order to 100 shares at the lowest market maker bid and highest market maker offer currently being displayed in that security and reopen the market maker's quote. Nasdaq believes that in the proposed electronic environment, five minutes—the current grace period—is too long a period to have a quote closed on the Nasdaq screen. Nasdaq also believes that restoring the quote at the lowest ranked bid or highest ranked offer price will ensure that market makers maintain continued participation in the market and are available to provide liquidity in a manner consistent with their market making obligations.[48]

c. *Order Execution Algorithm.* In general, Nasdaq would execute non-directed orders against Quoting Market Participant's quotes/orders based on price/time priority. As noted above, each quote/order when entered into Nasdaq would receive a time stamp. Nasdaq would execute all orders at the best bid/best offer in general time priority based on the time stamp of the quote/order, subject to the following specific procedures.

First, the system would attempt to match orders entered by a Nasdaq Quoting Market Participant against its own quote/order if the Nasdaq Quoting Market Participant is at the best bid/bet offer. Thus, the system would try to match a Nasdaq Quoting Market Participant's orders and quotes/orders that are in the system if the participant is at the BBO and receives a market or marketable limit order on the other side of the market.

Second, after completing this process (when applicable), the proposed NNMS would first execute against displayed quotes/orders (attributable and non-attributable) of market makers and ECNs that participate in the automatic-execution functionality of the system, in time priority based on the entry time of the quotes/orders from these market makers and ECNs.[49] (There should be no interval delay between the delivery of executions against the quotes/orders of a market maker or ECN that participate in automatic execution (assuming the market maker or ECN has size to access), because all Nasdaq Quoting Market Participants may quote their actual size and may give Nasdaq multiple quotes/orders and price levels.)

Third, the NNMS would execute against the displayed quotes/orders (attributable and non-attributable) of ECNs that participate in the order-delivery functionality of the NNMS. This too would be based on time priority of quotes/orders entered by ECNs that accept order delivery. The system then will execute against reserve size of market makers and ECNs that participate in the automatic-execution functionality of the NNMS (in time priority), and then against the reserve size of ECNs that participate in the order-delivery functionality of the system.

Fourth, once displayed and reserve size in Nasdaq is exhausted, the system would attempt to access the quotes of UTP Exchanges, again in time priority based on the entry time of the UTP Exchanges' quotes (assuming there is more than one UTP Exchange in the stock at that price level). Similar to the Intermarket Trading System (''ITS''), the system would first attempt to probe and sweep the Nasdaq market before sending an order to another market center.[50]

Last, the system would then move to the next price level. There would be a five-second delay before the Nasdaq system would attempt to execute any orders in its system at that time. Orders held during this five-second period would then be executed in time priority, up to the available size, at that next price level. The five-second interval delay would not impact the processing of directed orders. Requests to cancel orders would also be accepted during the five-second delay. This delay will give market participants time to adjust their quotes and trading interests before the market moves precipitously through multiple price levels, which may occur when there is news, rumors, or significant market events. Nasdaq believes that the delay is a modest and reasonable attempt to limit volatility.

d. *Directed Orders.* The Nasdaq Quotation Montage would serve, in part, as a method for Quoting Market Participants to advertise their buying or selling interest. To access a specific quote/order in the Nasdaq Quotation Montage, a market participant would enter into the OCF a ''directed order'' to begin the negotiation process with a particular Quoting Market Participant. A directed order is one that is routed by the market participant entering the order to specific MMID. To limit the possibility for dual liability, a directed order would have to be designated as: (1) All-or-None (''AON'') and at least 100 shares greater than the size of the displayed quote/order of the market participant to which the order is directed; or (2) a Minimum Acceptable Quantity order (''MAQ'') with a MAQ value of at least 100 shares greater than the displayed amount of the quote/order of the participant to which the order is directed. If a Quoting Market Participant is at the inside or is displaying (attributable or non-attributable) interest

[46] The parameters for QR are the same as for the NNMS. Accordingly, when a market maker's principal attributable quote (both displayed and reserve) is exhausted to zero, the system will refresh the market maker's price on the bid or offer side of the market, whichever is decremented to zero, by an interval designated by the market maker and the market maker's size to a level designated by the market maker. When the market maker's quote is refreshed, the QR will refresh the market maker's attributable quote/order (not the non-attributable quote) to a default size of 1,000 shares or an amount designated by the market maker. *See* note 5, *above.*

[47] For example, MMA's $20 bid is decremented to zero and MMA has set an QR of ¼ (meaning the quote will be updated to $19¾—¼ point away from the decremented $20 bid price). If MMA has an attributable buy quote/order for 19$^{15}/_{16}$, the system will display that order instead of the $19¾. Alternatively, if MMA has no other attributable quote/order in the system or it MMA's next best attributable quote/order is priced inferior to the QR price of $19¾ (*e.g.,* $19½), the system will display the QR-produced quote of $19¾.

[48] Under current NASD Rule 4730, a market maker whose quote is decremented to zero and fails to restore its quote in the allotted time will be deemed to have withdrawn as a market maker (''SOESed-Out-of-the-Box''). Subject to certain specified exceptions, the market maker is prohibited from re-entering quotations in that security for twenty (20) business days. The NNMS Rules contain a virtually identical procedure, called ''Timed Out of the Box'' *See* note 5, *above.*

[49] Time priority would be based on the Nasdaq system time stamp for the individual quote/order.

[50] *See e.g.,* Section 8(a)(v) of the ITS Plan.

in the Nasdaq Quotation Montage and receives a directed, non-Liability Order that it wants to fill, to avoid double execution, it may request a cancel of its displayed quote/order in Nasdaq before it fills the non-Liability Order. Nasdaq will not decrement a quote/order upon the delivery of a directed, non-Liability Order.

e. *Locked/Crossed Markets.* Nasdaq believes with the implementation of the OCF, locked and crossed markets should be virtually eliminated. Specifically, if a Quoting Market Participant enters an order that would lock or cross the market, the OCF would not display the order as a quote/order, but instead the order would be treated as a marketable limit order and entered into the OCF as a non-directed Liability Order for execution in time priority. For locked market situations, the orders would be routed to the Quoting Market Participant(s) next in the queue who would be locked, and the order would be executed at the price of the locking quote/order. For crossed market situations, the crossing order would be entered into the system and routed to the next Quoting Market Participant(s) in queue, and the order would be executed at the price of the displayed quote/order that would have been crossed. Once the lock/cross is cleared, if the Quoting Market Participant's order is not completely filled, the OCF would reformat the order and display it as a quote/order on behalf of the entering Quoting Market Participant.[51]

Assuming, for example, that the inside market is $20 to 20^{1}/_{16}$, 1,000 by 1,000, and MMA is at the inside bid, if MMC attempts to enter into the system an offer quote/order of $20 for 4,000 shares, the system would format MMC's quote/order as an order, route it to MMA (assuming MMA is first in the queue and there are no other marketable orders in the queue ahead of MMC's order), and execute MMC's order against MMA's quote/order at $20 for 1,000 shares. Presuming the next market participant on the bid side is quoting at 19^{15}/_{16}$ and since there are 3,000 shares remaining in MMC's order, the OCF would reformat the remaining portion of the order and display it as a quote/order (consistent with the order's parameters), thereby establishing a new inside of 19^{15}/_{16}$ bid and $20 offer.

As a second example, if MMC attempts to enter into the system an offer quote/order of 19^{15}/_{16}$ for 1,000 shares when MMA is at the best bid of $20, the system would format MMC's quote/order as an order, route it to MMA, and execute MMC's order against MMA's quote/order at $20 for 1,000 shares, thus giving price improvement to MMC's order.

Finally, if the market is locked or crossed at 9:30 a.m., Nasdaq would clear out the locked and/or crossed quotes by executing the oldest bid (offer) against the oldest offer (bid) which it is marketable against, at the price of the oldest quote/order. Nasdaq would begin processing non-directed market and marketable limit orders that are in the queue.[52]

F. UTP Exchange Participation

National securities exchanges trading pursuant to grants of UTP would be able to enter orders into the OCF. Similar to today, UTP Exchanges would continue to receive, and be obligated to execute, Liability Orders. Specifically, when a UTP Exchange is next in queue to receive a non-directed Liability Order, Nasdaq would deliver the order to the UTP Exchange up to the size of the UTP Exchange's quote. The system would decrement the UTP Exchange's quote by an amount equal to the size of the delivered order. As described in the decrementation procedures above, if a UTP Exchange declines or partially fills the order, Nasdaq would send the order (or remaining portion thereof) back into the system for immediate delivery to the next available Quoting Market Participant. In addition, if the UTP Exchange declines or partially fills the order without immediately transmitting a revised quote/order at an inferior price, or if the UTP Exchange fails to respond in any manner within 5 seconds of order delivery, Nasdaq would presume equipment failure and immediately reroute the order to the next Quoting Market Participant in the queue. The system would then place the side of the UTP Exchange's quote that was being assessed, at the lowest bid or highest offer price for 100 shares.

UTP Exchanges would be free to provide automatic executions against their quotations. Additionally, if a UTP Exchange wishes to access the best Nasdaq market, the UTP Exchange could enter a non-directed Liability Order into the OCF. the OCF would be programmed to send the next Quoting Market Participant an order for delivery, not automatic execution, regardless of whether the receiving Quoting Market Participant participates in automatic execution. UTP Exchanges would also be able to direct non-Liability Orders for negotiation to particular market makers. Finally, as is the case today, UTP Exchanges would only be able to submit a single, two-sided attributable quote, and would not be able to utilize reserve size or QR.

G. ECN Participation

As is the case today, ECNs who are NASD members would have the choice of taking order delivery or participating in automatic execution. Regardless, ECNs in Nasdaq would have full access to the OCF for order entry and order delivery. Specifically, ECNs who are NASD members would be able to designate quotes/orders as attributable/non-attributable, and would be able to transmit multiple quotes/orders at multiple prices. ECNs would be able to utilize the system's reserve size feature for quotes/orders. ECN participation in Nasdaq would continue to be governed by rule and private contract.

H. Odd-Lot Processing

Under this provision of the proposal, Nasdaq would accept and execute orders less than one normal unit of trading, *i.e.,* odd-lot orders or orders less than one round lot (*i.e.* 100 shares for equities). The system would provide a separate mechanism for processing and executing these orders as distinct from normal units of trading. Nasdaq would hold odd-lot orders in a separate file and automatically execute such odd-lots against all registered market makers in round robin rotation whenever the odd-lot order becomes marketable.[53] For example, if a member enters a market order for 50 shares into the system, it would immediately and automatically execute the order at the inside price against the market maker that is first in rotation for execution of such orders, regardless of the market maker's quoted price. The automatic execution would not decrement the market maker's displayed size. Additionally, if a mixed lot is entered into the system, to ensure continuity of price, once the round-lot portion is executed, the odd-lot portion would be executed against the next market maker in rotation at the round-lot portion price.

I. Nasdaq SmallCap

Nasdaq proposes to use the expanded NNMS system and the Nasdaq Order Display Facility for all Nasdaq

[51] If the market moves and the order no longer is locking/crossing, the OCF will return the order and format it as a quote/order for display in Nasdaq.

[52] Prior to the opening, Nasdaq would continue to process ''trade or move'' messages, as proposed in SR–NASD–99–23. *See* Exchange Act Release No. 41473 (June 2, 1999), 64 FR 31335 (June 10, 1999).

[53] An odd-lot order becomes marketable when the best price in Nasdaq moves to the price of the odd-lot limit order. Odd-lot orders that are marketable at entry or become marketable will execute against the first market maker in rotation for odd-lot processing at the best price or at the odd-lot order's price.

securities, including SmallCap securities. Nasdaq sees no reason to continue to have separate systems for its listed securities. Additionally, from a technological perspective, it is very costly and difficult to run two separate platforms. As such, Nasdaq proposes to delete the current SOES rules that apply to SmallCap.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent, in general, with the provisions of Section 15A of the Act, and in particular, Sections 15A(b)(2),[54] 15A(b)(6),[55] and 15A(b)(11),[56] and Section 11A of the Act,[57] in that the proposed rule change is designed to enhance the protection of investors and provide for the fairest and most efficient mechanism for transactions in the market for Nasdaq securities. Section 15A(b)(2)[58] requires the Association to be organized to enforce compliance by its members and associated persons with the provisions of the Act, the rules thereunder, and the rules of the Association. Section 15A(b)(6)[59] requires that the rules of a registered national securities association be 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change represents a significant effort to provide for an integrated order delivery and execution system where all market participants and investors may be brought together in a signal system and where all orders are processed and distributed in a fair and orderly fashion to achieve immediate or rapid executions at the best available price.

Nasdaq believes that the system will provide many benefits to Nasdaq market makers, ECNs, and order entry firms. First, the system through the OCF should eliminate, in total, the potential for double execution and double liability that market makers currently face. Second, market makers' regulatory burdens should be reduced because the Nasdaq believes that Nasdaq Order Display Facility will comply with the display alternative in Rule 11Ac1–4 under the Act.[60] Thus, market makers should be able to display their principal and agency interest anonymously in the Nasdaq Order Display Facility without changing their attributable quote in Nasdaq and still comply with Rules 11Ac1–1 and 11Ac1–4 under the Act.[61] Moreover, the potential that a limit order on a Nasdaq Quoting Market Participant's back book would be traded through (or not be displayed as required by Rule 11Ac1–4 under the Act) should be minimized because Nasdaq market makers and ECNs would be able to give the system multiple orders. Thus, Nasdaq believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act,[62] and Rule 11A thereunder,[63] which sets forth findings of Congress that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

In a similar vein, the Nasdaq believes that the Order Display Facility should reduce fragmentation and increase transparency. The Nasdaq believes that the Nasdaq Order Display Facility is consistent with Section 15A(b)(11),[64] which requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. Specifically, Nasdaq market makers and ECNs would no longer be limited to displaying to the market their best bid and best offer quotes. If the proposal is approved, market makers and ECNs would be able to display in Nasdaq multiple levels of trading interest and varying prices. This interest would be electronically accessible if/when the trading interest falls within the best three prices on either side of the market. While a market maker or ECN currently can only display one level of trading interest (on either side of the market) to the market at any one point in time, the proposal would enable market makers and ECNs to display (and electronically access) three price levels of trading interest in the Nasdaq Order Display Facility. Order entry firms would benefit from the proposal because they would be able to view and electronically access these additional levels of trading interest. Thus, Nasdaq believes that the proposal should enhance liquidity and transparency, while reducing fragmentation.

Finally, the Nasdaq believes that the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act,[65] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and order markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer. As noted above, the OCF should integrate Nasdaq's current trading systems from an end user's prospective, substantially enhance these systems, and provide a single point of entry and delivery of Liability Orders. The OCF should also encourage ECNs to participate in automatic execution because the potential for incurring a proprietary position due to double executions should be minimized by the proposed new functionality (*i.e.,* the ability to give Nasdaq multiple quotes/orders.) Nasdaq believes that this proposal advances all the goals of Section 11A of the Act[66] by providing an integrated order delivery and execution system, enhanced display of agency and principal trading interest via the Nasdaq Order Display Facility, and by increasing the opportunity for market participants to participate in, and investors to receive, automatic execution. Thus, the Nasdaq believes that the proposal is designed to provide maximum transparency and efficient executions at the best price for the benefit of all investors and market participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nadaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[54] 15 U.S.C. 78*o*–3(b)(2).
[55] 15 U.S.C. 78*o*–3(b)(6).
[56] 15 U.S.C. 78*o*–3(b)(11).
[57] 15 U.S.C. 78k–1.
[58] 15 U.S.C. 78*o*–3(b)(6).
[59] 15 U.S.C. 78*o*–3(b)(6).
[60] *See* 17 CFR 240.11Ac1–4.
[61] *See* 17 CFR 240.11 Ac1–1 and 17 CFR 240.11 Ac1–4.
[62] 15 U.S.C. 78k–1(a)(1)(B).
[63] *See* 17 CFR 240.11A.
[64] 15 U.S.C. 78*o*–3(b)(11).
[65] 15 U.S.C. 78k–1(a)(1)(C).
[66] 15 U.S.C. 78k–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor 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 self-regulatory organization 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, 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, N.W., Washington, D.C. 20549–0609. 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 NASD. All submissions should refer to File No. SR–NASD–99–53 and should be submitted by December 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[67]

Johathan G. Katz,

Secretary.

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[67] 17 CFR 20.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42178; File No. SR–PCX–99–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Creating PCX Equities, Inc.

November 24, 1999.

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 October 7, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to create a Delaware stock corporation, to be called PCX Equities, Inc. (''PCX Equities''), which will be a wholly-owned subsidiary of the PCX, and to transfer to PCX Equities all of the assets and liabilities that solely support the equities trading business and/or equities clearing business of the PCX. The PCX also proposes to authorize PCX Equities to issue Equity Trading Permits (''ETPs'') and Equity Automated Systems Access Permits (''Equity ASAPs'') that will entitle holders of the permits to trade equity securities at the new PCX Equities. The proposed rule changes for implementing the restructuring, including (1) the Certificate of Incorporation for PCX Equities; (2) the Bylaws for PCX Equities; (2) the Rules for PCX Equities; (3) changes to the PCX Constitution; and (4) changes to the PCX rules, are available for inspection at the places specified in Item IV of this notice.

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 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 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*

a. Purpose of the Proposed Restructuring. The PCX proposes to create the PCX Equities subsidiary and the corresponding trading permits for two primary reasons. First, the PCX intends to separate the equities operation into a stand-alone subsidiary of the PCX that will continue to share certain corporate functions with the Exchange's options business and to operate pursuant to the PCX's self-regulatory organization (''SRO'') registration. The PCX believes that by restructuring the equities business as a private stock corporation with business control and management, the entity will have greater flexibility to develop and execute strategies designed to improve its competitive position than it has under the current membership-cooperative structure. Furthermore, the PCX anticipates that by restructuring as a private stock corporation, PCX Equities management will be better able to respond quickly to competitive pressures and to make changes to the operation as market conditions warrant.

Second, the PCX intends to increase the revenue of the equities business by conferring trading privileges on the basis of ETPs rather than requiring equities trading participants to bear the expense of a full PCX membership. The PCX believes these changes will ease existing limits on trading access and allow all interested traders to participate in programs offered, which will include competing and remote specialist platforms as contemplated by the proposed rule amendments filed with the SEC on February 26, 1999,[3] and September 3, 1998,[4] respectively.

As members of the PCX, PCX seat owners will retain ownership of the subsidiary and ultimately will benefit from any improvement in the financial health of that entity resulting from these changes.

b. PCX Equities, Inc. i. *Structure.* PCX proposes to create PCX Equities, a Delaware stock corporation, as a wholly-owned subsidiary. All of the issued shares of stock of PCX Equities will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 41327 (April 22, 1999), 64 FR 23370 (April 30, 1999).

[4] Exchange Act Release No. 41051 (February 12, 1999), 64 FR 8426 (February 19, 1999).

owned by PCX. Current PCX members will retain their memberships in the PCX, which will be the sole stockholder of PCX Equities.

ii. *Financial Information.* PCX plans to transfer all of the assets and liabilities that solely support the equities business or equities clearing business to PCX Equities. Assets that support both the options and equities business will be retained as assets of PCX. Costs related to these shared assets will appear as inter-company charges to PCX Equities. Such charges will be defined in an agreement between PCX and PCX Equities.

Revenue generated by the equities activity, including ETP and Equity ASAP fees, specialist fees, tape fees and transaction fees, will accrue to PCX Equities. Direct expenses related to the equities activity, such as technology and personnel, will be charged to PCX Equities. Allocations of the cost of certain technology, regulatory and corporate functions will be charged to PCX Equities pursuant to an agreement between PCX Equities and PCX. PCX Equities is expected to be included in the same consolidated tax group as PCX for federal income tax purposes. The PCX believes that by changing the business model, the PCX Equities management will have greater flexibility with respect to any future changes to fees or other aspects of the operation that may be necessary to attract new entrants or to develop new business opportunities.

iii. *Governing Documents and Rules.* The proposed Certificate of Incorporation, Bylaws and Rules will govern the activities of PCX Equities. Rules 1 and 3, which relate to qualifications for ETPs and Equity ASAPs and corporate governance, and Rule 10, which relates to disciplinary procedures, reflect significant departures from existing PCX Rules. The remaining rules, although modified to reflect the ETPs and Equity ASAPs, are similar to current PCX rules. The Rules and Bylaws will reflect the status of PCX Equities as a wholly-owned subsidiary of PCX, under management of the PCX Equities Board of Directors and its designated officers, with self-regulation pursuant to the PCX's registration pursuant to Section 6 of the Act.[5]

iv. *Board of Directors.* The Board of Directors of PCX Equities shall consist of no fewer than ten (10) or more than twelve (12) directors. The number of directors is currently contemplated to be ten (10) members, composed of:

- The Chief Executive Officer of PCX;
- The President of PCX Equities;
- Five public directors, at least three of whom must also be members of the Board of Governors of the PCX;
- One allied person from an ETP Firm who is also a member of the PCX Board of Governors, and
- Two nominees of the combined ETP holders and Equity ASAP holders (the ''ETP/Equity ASAP holder directors'').

The Board of Directors will be appointed initially by the Incorporator. Subsequent Boards of Directors will be nominated by the sitting Boards of Directors, subject to the ETP/Equity ASAP holder nominating procedures set forth below for the two ETP/Equity ASAP holder directors, and elected by PCX, the sole shareholder. PCX, as the sole stockholder, will have the right to approve, remove and replace any member of the Board of Directors. Any vacancy on the Board of Directors will be filled with a person who satisfies the classification associated with the vacant seat. To the extent that the number of Board seats is changed from the initially contemplated ten (10) members, at least fifty percent of the Board will be public directors, and at least twenty percent (but no fewer than two (2) directors) will be ETP/Equity ASAP holder directors nominated by the ETP holders and Equity ASAP holders.

The ETP/Equity ASAP holder directors will be nominated by the Nominating Committee or by petition of at least twenty percent of ETP holders and Equity ASAP holders. If a petition is submitted and a vote is necessary, the nomination must be supported by a plurality of the ETP holders and Equity ASAP holders. If no petition is filed, the nominees put forward by the Nominating Committee will be deemed to be elected, and no separate vote of ETP holders and Equity ASAP holders will be held. Pursuant to a stockholders voting agreement, the PCX Equities Board of Directors will agree to nominate the persons who are so selected by ETP holders and Equity ASAP holders to the Board of Directors, and PCX, as the sole stockholder, will agree to elect such persons.

v. Nominating Committee.The Nominating Committee will nominate two nominees for the PCX Equities Board of Directors and one nominee for the PCX Board of Governors. Such nominees may be ETP holders, allied persons of ETP firms, or Equity ASAP holders. The nominee for the PCX Board of Governors may be the same as one of the nominees for the PCX Equities Board of Directors. The Nominating Committee will have seven members, six of whom will be ETP holders or Equity ASAP holders. The seventh member will be a person from the public. The Incorporator will appoint the initial Nominating Committee. Thereafter, the sitting Nominating Committee will propose six of the seven new members of the subsequent Nominating Committee and submit the slate of candidates to ETP holders and Equity ASAP holders for approval. Candidates for the Nominating Committee also may be put forward by a petition of at least twenty percent of ETP holders and Equity ASAP holders. If no petition is filed, the slate proposed by the sitting Nominating Committee will be deemed to be approved by ETP holders and Equity ASAP holders, and no separate vote of ETP holders and Equity ASAP holders will be held. The Chief Executive Officer (''CEO'') of PCX Equities will appoint the public member of the Nominating Committee.

vi. Management. PCX Equities will have a Chairman of the Board and a President, either of whom may be the CEO, a Secretary, and a Chief Regulatory Officer, appointed by and serving at the pleasure of the Board of Directors of PCX Equities. The officers of PCX Equities will manage the business and affairs of PCX Equities, subject to the oversight of the Board of Directors, and, in some cases, the approval of PCX as the sole stockholder.

vii. Disciplinary Process. PCX Equities' disciplinary process will be similar to the existing PCX disciplinary process and will be governed by a Business Conduct Committee. The Business Conduct Committee will be appointed initially by the Incorporator. Following the rollout period (as described below), the CEO or his or her designee may appoint the members of the Business Conduct Committee. Except during the rollout period, members of this committee will be ETP holders or Equity ASAP holders.

The PCX Equities Chief Regulatory Officer, or his or her staff, will authorize the initiation of disciplinary actions and proceedings. The Business Conduct Committee will conduct hearings, render decisions, and impose sanctions. Decisions of the Business Conduct Committee may be appealed for review to a Board Appeals Committee, which will be appointed by the PCX Equities Board of Directors and will include public members of the Board of Directors. Decisions of the Board Appeals Committee may be appealed to the PCX Board of Governors and subsequently to the SEC.

As with PCX decisions, the SEC has the authority to review final disciplinary sanctions imposed by the PCX Equities on ETP holders and Equity ASAP holders, including sanctions

[5] 15 U.S.C. 78f.

imposed on rule violations of PCX Equities.

viii. Equity Listings and Delistings. The management of PCX Equities will list and delist securities in accordance with rules and standards comparable to those set forth in the PCX Rules of the Board of Governors and currently used by the Equity Listing Committee of the PCX.

ix. Other Committees. The proposed Bylaws and Rules of PCX Equities envision only two Equity Committees—the Nominating Committee and the Business Conduct Committee. However, the PCX Equities Board may appoint other committees, if it deems it appropriate. Except for the Nominating Committee, the CEO of PCX Equities will appoint the members of all Equity Committees for terms of one year. The CEO also will appoint the Chair and Vice Chair of each Equity Committee. ETP Holders, Equity ASAP Holders and public representatives may be appointed to serve all Equity Committees. The PCX Equities Board may also appoint the Board of Appeals Committee as well as any Board Committee it deems appropriate.

x. Regulation of PCX Equities, Inc. Following the restructuring, PCX Equities will operate as a subsidiary of PCX, which is a national securities exchange registered under Section 6 of the Act. For purposes of the Act, ETP Holders and Equity ASAP holders will be ''members'' of the PCX.

As a registered national securities exchange and the parent company of the PCX Equities, PCX will continue to carry out PCX's statutory responsibilities to enforce compliance by ETP holders and Equity ASAP holders in accordance with provisions of the federal securities laws and the Rules of the PCX Equities. As the registered SRO, the PCX will continue to have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary. The Board of Governors and management of PCX believe that the regulatory methods and resources of the PCX and PCX Equities will satisfy obligations of the PCX.

PCX will be required to approve any changes to the rules and governing documents of PCX Equities and to file any such changes with the SEC pursuant to Section 19(b) of the Act [6] and Rule 19b–4 thereunder.[7]

xi. Representation on PCX Board. The PCX Board is currently composed of 22 governors. The composition of the PCX Board will be modified as part of the restructuring to include one governor representing PCX Equities. This governor will be nominated by the Nominating Committee or by a petition of at least twenty percent of ETP holders and Equity ASAP holders to provide PCX Equities input on the PCX Board. The nomination must be supported by a plurality of the ETP holders and Equity ASAP holders. Pursuant to the agreement between PCX Equities and the PCX, the PCX Board of Governors will appoint the person who is so nominated by ETP holders and Equity ASAP holders to the Board of Governors.

xii. Agreement between PCX and PCX Equities. Currently, the PCX equities operations and options operations share certain infrastructure and personnel. After the completion of the restructuring, these shared assets will remain the property of PCX and the shared personnel will continue to be employed by PCX. In each case, however PCX Equities will have access to those resources through inter-company contracts with PCX. In particular, PCX will contract to provide PCX Equities with certain management and support services and staff. The contract will include services for administration, membership, technology, finance and accounting, human resources and legal services. The agreement between PCX and PCX Equities will allocate charges for these services and staff between PCX and PCX Equities.

c. Equity Trading Permits and Equity ASAPs. i. Classes of Trading Permits and Privileges Conferred by ETPs and Equity ASAPs. PCX Equities will be authorized to issue two types of equity trading permits: ETPs and the Equity ASAPs. The Board of Governors does not currently contemplate any other type of equity trading permit, although as technology advances, additional electronic trading practices may be authorized for both or either of the ETP or Equity ASAP holders.

ETPs will authorize a holder to trade equity securities on any facility of PCX Equities, including the trading floors, P/COAST, or OptiMark, as a specialist, floor broker or order flow firm. ETP holders may engage in trading of equities in the same manner as currently practiced by PCX Members who trade on the equity floor. Like current ASAP Members, Equity ASAP holders will be entitled to limited trading privileges on the equities floor and access to P/COAST, OptiMark, and any other systems approved by the Board of Directors, in accordance with rules comparable to those set forth in the PCX Rules of the Board of Governors.[8]

An ETP or Equity ASAP does not grant its holder any right to trade options on the PCX. Any ETP holder or Equity ASAP holder that wishes to trade options must be approved for an obtain a PCX membership pursuant to the PCX's standard application procedures.

ETP holders and Equity ASAP holders will have limited voting rights and may nominate, through the Nominating Committee or by petition, two members to the PCX Equities Board of Directors and one member to the PCX Board of Governors. Unlike current ASAP members, Equity ASAP holders will have these limited voting rights.

ETP holders and Equity ASAP holders will hold six of the seven places on the Nominating Committee. The Incorporator will select the initial Nominating Committee. The sitting Nominating Committee will make subsequent nominations to the Nominating Committee. The seventh place on the Nominating Committee will be a person from the public selected by the Chief Executive Officer of PCX Equities.

Neither ETP holders nor Equity ASAP holders will have any distribution or other ownership rights in PCX Equities or PCX by virtue of their status as an ETP holder or Equity ASAP holder.

ii. Number of ETPs and Equity ASAPs. There will be no limit on the number of ETPs and Equity ASAPs issued by PCX Equities.

iii. Qualifications for ETPs and Equity ASAPs. PCX Equities will commence issuing ETPs and Equity ASAPs once the subsidiary is created. Current PCX members, PCX ASAP members, and any other interested persons or entities which are registered broker-dealers and are not existing PCX members may be granted PCX Equities trading privileges through an application process. ETP qualification and Equity ASAP qualifications will be substantially the same as the requirements for PCX membership and PCX ASAP membership, respectively.

The application process for applicants who are not current PCX members or ASAP members will be the same as that now required by PCX. The decision to grant or deny an application for trading privileges will be made by officers of

[6] 15 U.S.C. 78s.

[7] 17 CFR 240.19b–4.

[8] Equity ASAP holders have electronic access to the PCX Equities floor. They are required to execute eighty percent of their trade and volume via an approved systems, *i.e.*, PCOAST or Optimark. The balance of their volume and trade can be entered by telephone with a floor broker. Telephone call between Kathryn Beck, General Counsel, PCX, and Kelly Riley, Division of Market Regulation, SEC, on November 23, 1999.

PCX Equities and the denial of an application will be appealable.

Current PCX members and ASAP members will be required to submit an application and fee, but the documentation and application processing time will be less.

iv. ETP/Equity ASAP Rollout Process. The Board believes that the proposed rollout mechanism will allow equity specialists, floor brokers, their firms, and seat owners to decide among themselves when to convert to ETPs during a nine-month period. As set forth in the schedule below, the monthly fee to be charged during the rollout period will be closely correlated, but discounted, to the current prevailing monthly lease rate for PCX memberships and will decrease proportionately over that period until it reaches $2,000 per month in the tenth month following inception.

During the rollout period, which will commence only after the restructuring has been approved by the SEC, both PCX members and ETP holders will be permitted to trade equities on the equities trading floors of the PCX. Similarly, both ASAP holders and Equity ASAP holders will be provided automated system access as set forth in the PCX Rules.

At the end of the rollout period, all individuals executing equity trades through PCX Equities must hold an ETP or an Equity ASAP, and all firms clearing equities trades must have either an ETP or Equity ASAP. After the rollout period, PCX memberships will no longer confer rights to trade, to route orders, or to be a good clearing give-up through the equity trading facilities of PCX Equities.

v. Cost of ETPS and Equity ASAPs. Current PCX members, whether trading equities or options, or both, current ASAP members, and non-members who want to trade through PCX Equities' trading facilities, will be subject to a fee schedule applicable to each type of permit. The fees for an ETP will be assessed on a monthly basis and the fee for an Equity ASAP will be assessed on a yearly basis. The fees will be set by PCX Equities at a fixed level rather than indexed and will be subject to change.

The proposed fee schedule for ETPs is as follows:

ETP rollout period*				Post rollout period ETP monthly fee
Months 1–4	Months 5–7	Month 8	Month 9	
2% of the average of the last five seat sales at the time of the rollout Period	$7,000	$6,000	$5,000	$2,000

*Fee Schedule subject to adjustment.

Although the fee is subject to change, initially, the fee for Equity ASAPs is planned to be $4,000 annually. Management of PCX Equities will recommend changes to the initial rates and charges as deemed appropriate for development of new business or in response to competitive changes. All such rate changes shall be subject to the approval of the PCX Board of Governors and filing with the SEC.

vi. Non-transferability of ETPs or Equity ASAPs. ETPs and Equity ASAPs will not be transferable by sale or lease, but they may be transferred between individuals within the same firm in accordance with the Rules of PCX Equities.

d. PCX. i. Trading Options. Current members who trade only equities or who trade equities and options on the PCX must obtain an ETP or Equity ASAP by the end of the rollout period as described above. For those members who currently trade only options on the PCX, the proposed restructuring will not affect their access to or activities on the PCX's options trading facilities. PCX memberships will continue to be required to transact options business at PCX. After the rollout period, however, PCX memberships will no longer confer rights to trade on the equity floor or electronically through the equity trading facilities or to be a good clearing give-up on the equity trading facilities. After the completion of the restructuring, PCX memberships may be purchased, sold or leased as they are today. The rights of PCX members upon the liquidation of PCX will remain unchanged. The proposed amendments to the PCX Constitution and Rules primarily involve the deletion of equities-related language and the addition of language allowing the restructuring and new categories of trading permits as discussed above. A copy of the proposed amendments to the PCX Constitution and the PCX Rules are included in the public file and may be inspected at the places specified in Item IV of this notice.

ii. National Market System Plans. The PCX currently is a participant in various national market system (''NMS'') plans, including the Consolidated Tape Association (''CTA'') Plan, the Consolidated Quotation System (''CQS'') Plan, the Intermarket Trading System (''ITS'') Plan and the Options Price Reporting Authority)''OPRA''). These plans are joint industry plans for SROs that address last sale reporting, quotation reporting, intermarket trading and options price reporting, respectively. Following the creation of PCX Equities, PCX, in its continuing role as the SRO, will continue to serve as the voting member of these NMS Plans. Nevertheless, PCX expects that, for those plans that relate to equity trading, *i.e.,* the CTA Plan, the CQS Plan and the ITS Plan, a PCX Equities representative will serve as the PCX's representative in dealing with these plans.

2. Basis

The PCX believes the proposed rule change is consistent with Section 6(b) [9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and a national market system and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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 self-regulatory organization 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, 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, N.W., Washington, D.C. 20549–0609. 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 PCX. All submissions should refer to File No. SR–PCX–99–39 and should be submitted by December 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–31528 Filed 12–3–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 4, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Gregory Diercks, Y2K Loan Program Manager, Office of Financial Assistance, Small Business Administration, 409 3rd Street, S.W. Suite 8100.

FOR FURTHER INFORMATION CONTACT: Bruce Purdy, Financial Analyst, 202–205–7532 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Y2K Economic Injury Loans''.

Form No: N/A.

Description of Respondents: Loan applicants and participating lenders.

Annual Responses: 200.

Annual Burden: 617.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–31564 Filed 12–3–99; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Notice of Senior Executive Service Performance Review Board Members

AGENCY: Small Business Administration.

ACTION: Notice of Members of the FY 1999 Performance Review Board Members.

SUMMARY: Section 4314 (c)(4) of Title 5, U.S.C., requires that Federal agencies publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB).

SUPPLEMENTARY INFORMATION: The following is the FY 1999 PRB roster:

1. Kris Swedin, Chief of Staff;
2. Kris Marcy, Chief Operating Officer;
3. Michael Schattman, General Counsel;
4. Elizabeth A. Montoya, Associate Deputy Administrator for Management and Administration;
5. James Ballentine, Associate Deputy Administrator for Government Contracting and Minority Enterprise Development;
6. Charles Tansey, Associate Deputy Administrator for Capital Access;
7. Linda Williams, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development;
8. Carolyn J. Smith, Assistant Administrator for Human Resources;
9. Erline Patrick, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance;
10. Gregory Walter, Deputy Chief Financial Officer;
11. Eric Benderson, Associate General Counsel for Litigation;
12. James Van Wert, Senior Advisor for Policy and Planning;
13. Thomas Dumaresq, Assistant Administrator for Administration;
14. Jane Palsgrove Butler, Associate Administrator for Financial Assistance;
15. Johnnie Albertson, Associate Administrator for Small Business Development Centers;
16. Judith Roussel, Associate Administrator for Government Contracting;
17. Robert Moffitt, Associate Administrator for Surety Guarantees;
18. Arnold Rosenthal, Assistant Administrator for Borrower and Lender Servicing;
19. Alberto Alvarado, District Director (Los Angeles);
20. Gary Cook, District Director (South Florida); and
21. Darryl Hairston, District Director (Washington).

Dated: November 22, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–31479 Filed 12–3–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice No. 3162]

Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the forty-eight (48) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act

mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 19, 1999.

William J. Lowell,

Director Office of Defense Trade Controls.

BILLING CODE 4710–25–P

United States Department of State

Washington, D.C. 20520

0[illegible] 5 -

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of 1 (one) commercial communications satellite to French Guiana for launch on an Ariane launch vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 109-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 14 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of hardware and technical data and assistance related to the "IBIS" Project for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 126-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the amendment of a manufacturing license agreement with Turkey for the production of the ESCORT Short-Range Thermal Surveillance System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 8-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed a Technical Assistance Agreement with Brazil.

The transaction contained in the attached certification involves the manufacture of propellants and explosives, for the production of small arms propellant and commercial small arms for use by the Brazilian military, the United States and NATO.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 25-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of certain PATRIOT System components to support the PATRIOT co-development and product improvement programs in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 87-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26

OCT 26 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the amendment of a technical assistance agreement with the United Kingdom for the integration of an imaging infrared seeker unit into the UK Advanced Short Range Air-to-Air Missile and marketing to government end-users in approved countries.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 92-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export technical data and assistance in the manufacture of Infrared Detecting Sets in Japan for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 93-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

26

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services in support of ongoing efforts to establish a formal structure for civilian control of the military, train the Federation of Bosnia and Herzegovina forces in defensive tactics, and improve their capability to deter hostile forces and defend their territory if deterrence fails.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 100-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, notification of a proposed approval for the export of defense articles sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached notification involves the sale to Japan of one Superbird-4 communications satellite for launch from French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 112-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance for the manufacture in Japan of AN/ALQ-131 Electronic Countermeasure Systems for the Japanese Air Self Defense Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 114-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement with Greece.

The transaction described in the attached certification involves the manufacture, assembly and test of Patriot missile launchers for the Greek armed forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 118-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Italy of the C-27J medium tactical transport aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 120-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in The Netherlands of F-16 Mid-Life Update retrofit kits for use by the United States, Belgium, Denmark, The Netherlands and Norway.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 122-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export to Luxembourg of the ASTRA 2D commercial communications satellite and associated ground systems, training and customer operations support. The transaction also includes launch operations support in French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 127-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export to Luxembourg of the ASTRA 2C commercial communications satellite and associated ground systems, training and customer operations support to be launched from French Guiana or Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 128-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance in the manufacture of Sidewinder AIM-9L Missile System for end use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 129-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 26 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export technical data and assistance in the manufacture of HAWK Air Defense System Phase III Product Improvement Program retrofit kits in Japan for end use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 130-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 27

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense articles or defense services sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of 100 Advanced Medium Range Air-to-Air Missiles (AMRAAM) for the F-16 aircraft for use by the Republic of Korea Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 102-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 27

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, notification of a proposed approval for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached notification involves the transfer to the United Arab Emirates of two (2) geosynchronous communications satellites, related fuels, and ground segments which will make up the Thuraya Satellite Telecommunications Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 111-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 27 199[illegible]

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance in the manufacture of opto-mechanical major assemblies, optical components and subassemblies in Canada for return to the United States for integration into various missile and other defense systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 145-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 28 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and 6000 TAC Kits for the manufacture in Turkey of F110-GE-100/100B Gas Turbine Engine parts and components for the Turkish Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 115-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 28 [illegible]

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export and production of the Amphibious Assault Vehicle (AAV7A1), in the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 153-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 28 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of services, depot-level maintenance and repair of the MPN-14K(TU) RAPCON Radar, in Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 158-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 29 ..

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense articles or defense services sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of 156 Advanced Medium Range Air-to-Air Missiles (AMRAAM) for the F-18 aircraft for use by the Finnish Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 101-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 29 [illegible]

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to Israel for the manufacture of J85, T64, T700 and T58 engine parts and components.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 106-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

[illegible] 9 [illegible]

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the sale of five (5) FPS-117 dual use air surveillance systems to the Ministry of Defense, Republic of Croatia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 132-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 29 [illegible]

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and defense articles to Turkey for the manufacture, assembly and retrofitting of X200-4 series transmissions for military tracked vehicles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 148-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 1 [illegible]

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and solar cells to Japan for use in European, Japanese and U.S. commercial communication satellite programs.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 135-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

DV - 1

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and defense articles to design and implement an integrated air and land surveillance system for the Amazon region for the Government of Brazil.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 143-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 1 [illegible]

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services for the development, documentation, build, test and delivery of 400 GD883 Power Packs (engines) less transmissions for the Government of Israel, Ministry of Defense's Merkava Mark IV Main Battle Tank.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 159-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 2 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export to NATO of services to support the study and implementation of enhancements for the NATO Airborne Early Warning and Control Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 150-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV -2 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of post delivery support, services and Ground Systems Equipment Training for E767 AWACS aircraft in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 151-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV 3 1999

Dear Mr. Speaker:

Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Turkey.

The transaction described in the attached certification involves the manufacture of the AN/ALQ-178(V)5 Self Protection Electronic Warfare System (SPEWS II) for Turkish Air Force F-16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 85-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 2

Dear Mr. Speaker:

Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of 2 L-STAR commercial communications satellites and ground control system to the Asia Broadcast and Communications Network (ABCN) in Thailand. The satellites will be launched on an Ariane launch vehicle from French Guiana. This Ku band system provides commercial communications and direct TV broadcasting throughout Southeast and Southwest Asia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 140-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 3 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, hardware, and assistance to support the acquisition, maintenance, and operation of fifty T-6A aircraft for end use by the Hellenic Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 146-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV -4

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of the K-1 aerospace vehicle, vehicle components, spares, technical data and technical assistance necessary to operate the commercial satellite launch facility in Australia for the launch and recovery of the K-1 aerospace launch vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 110-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the of export technical data and assistance in.the manufacture of AN/UYQ-21 Display and Acoustic Technology Devices in Japan for end use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 131-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV -4 1999

Dear Mr. Speaker:

Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Japan.

The transaction described in the attached certification involves the manufacture of inertial navigation units for use on Japanese F-15J aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 147-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV -4 199

Dear Mr. Speaker:

Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Technical Assistance Agreement with Greece.

The transaction contained in the attached certification involves the provision of design development and marine engineering services required for the Hellenic Navy to undertake the construction of a new class of Corvette in Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 149-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 4

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles and services to support the AN/ALQ-165 Korean Offset Program, in the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 154-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 4 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and design information on a communications satellite (MSAT-2) to the underwriters from Australia, Bermuda, Canada, France, Germany, Italy, Japan, Norway, Sweden and the United Kingdom in order to provide adequate insurance coverage during the operational life of the geosynchronous satellite.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 161-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 9 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the sale of a Command, Control, Communications and Intelligence system to the Gulf Cooperation Council.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 108-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 9 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the sale of four (4) TSP-117 Tactical Mobile Radar Systems to the Royal Australian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 134-99

The Honorable
J. Dennis Hastert
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 9 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Mexico of wiring harnesses and wiring harness panels for use on United States F-16, C-130, P-3, S-3 and F-22 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 155-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 9 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of two commercial communication satellites to the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 162-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV - 9 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the design, manufacture, and support of a commercial communications satellite for The Netherlands. The satellite will provide commercial communication services for Eastern United States, European, African, Middle Eastern, Central American, and South American markets.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 165-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV 10 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, hardware, and assistance to support the acquisition, maintenance, and operation of twenty-four (24) T-6A-1 Aircraft for end use in Canada for the NATO Flying Training in Canada (NFTC) Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 99-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV 10 1999

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification concerns the Sea Launch joint venture, in which Norway, Ukraine, Russia and United Kingdom will also participate, to provide commercial space launch services for communications satellites from a modified oil platform in the Pacific Ocean.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 124-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 99–31549 Filed 12–3–99; 8:45 am]
BILLING CODE 4710–25–C

DEPARTMENT OF STATE

[Public Notice 3167]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Anthony Van Dyck (Flemish, 1599–1641)''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, ''Anthony Van Dyck (Flemish, 1599–1641),'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the exhibit objects at The Museum of Fine Arts, Boston, from on or about December 15, 1999, to a future date indefinite, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW Washington, DC 20547–0001.

Dated: November 25, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 99–31552 Filed 12–3–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3166]

Culturally Significant Objects Imported for Exhibition Determinations: ''Empire of the Sultans: Ottoman Art From the Khalili Collection''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Empire of the Sultans: Ottoman Art from the Khalili Collection,'' imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Society of the Four Arts, Palm Beach, Florida, from on or about February 26, 2000, to on or about April 5, 2000; the Detroit Institute of the Arts, Detroit, Michigan, from on or about July 30, 2000, to on or about October 8, 2000; The Albuquerque Museum, Albuquerque, New Mexico, from on or about October 28, 2000, to on or about January 7, 2001; the Portland Art Museum, Portland, Oregon, from on or about January 27, 2001, to on or about April 8, 2001; the Bard Graduate Center for Studies in the Decorative Arts, New York, New York, from on or about April 26, 2001, to on or about July 8, 2001; the Asian Art Museum of San Francisco, San Francisco, California, from on or about July 28, 2001, to on or about October 7, 2001; The Bruce Museum of Arts and Science, Greenwich, Connecticut, from on or about October 27, 2001, to on or about January 27, 2002; the Milwaukee Art Museum, Milwaukee, Wisconsin, from on or about February 16, 2002, to on or about April 28, 2002; at the Frist Center for the Visual Arts, Nashville, Tennessee, from on or about May 10, 2003, to on or about July 20, 2003, and perhaps at other U.S. venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Lorie J. Nierenberg, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6084). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: November 23, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs., U.S. Department of State.

[FR Doc. 99–31551 Filed 12–3–99; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1514).

TIME AND DATE: 9 a.m. (EST), December 8, 1999.

PLACE: TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meetings held on April 21 and September 15, 1999.

Discussion Items

1. Nuclear Program Update

New Business

C—Energy

C1. This recommends that the Board: (1) Approve the Senior Vice President, Procurement, or a designee, entering into a contract with the United States Enrichment Corporation for the purchase of natural uranium hexafluoride and uranium enrichment services that can be used in nuclear units providing irradiation services for tritium production; (2) approve entering into an interagency agreement with DOE under which TVA would provide irradiation services for tritium production at Watts Bar and Sequoyah Nuclear Plants; and (3) rescind a May 17, 1999, delegation to the Chief Nuclear Officer dealing with the matters described in (1) and (2), above.

C2. Contract with Chem-Nuclear Systems, L.L.C., for radwaste support services at TVA nuclear plants.

C3. Year 2000 transmission service guidelines and rates.

C4. Indefinite quantity term agreement with Alcoa Fujikura Ltd., for fiber optic ground wire and accessories.

C5. Supplement to Contract No. 99P6J–249979 with Welding Services, Inc., for specialized welding repair services.

C6. Supplement to Contract No. 95P6G–133445 with NPS Energy Services, Inc., for modification and supplemental maintenance work at TVA's Western region fossil plants.

C7. Term coal contract with Virginia Electric and Power Company for coal supply to John Sevier Fossil Plant.

C8. Renegotiation of Contract No. P95P08–122779 with Commonwealth Coal Sales, Inc., and White Oak Mining and Construction Company, Inc., for coal supply to Allen Fossil Plant.

C9. Delegation of authority to the Vice President, Fuel Supply and Engineering Services, or a designated representative,

to enter into a coal transloading and blending contract with Kinder Morgan Operating L.P. ''B'' for delivery services to Allen Fossil Plant.

C10. Delegation of authority to the Vice President, Fuel Supply and Engineering Services, or a designated representative, to enter into a term contract with Ohio River Company for barging services to Allen Fossil Plant.

C11. Renegotiation of Contract Nos. P95P08–122746 and P97P01–199332 with Genwal Resources, Inc., for coal supply to Allen Fossil Plant.

C12. Increases in prices under dispersed power price schedule.

A—Budget and Financing

A1. Approval of tax-equivalent payments for Fiscal Year 1999 in accordance with Section 13 of the TVA Act.

B—Purchase Award

B1. Contracts with Fujitsu Business Communication Systems, Siemens Information and Communications Networks, Inc., and TennMark Telecommunications, Inc., for telephone equipment and maintenance services.

B2. Contract with Faison Office Products Company for office supplies/equipment and forms management services TVA-wide.

B3. Contract with Blue Cross Blue Shield of Tennessee for use of the provider network, medical claims administration, medical management, and cost containment services.

B4. Supplements to blanket purchasing agreements with Federal Data Corporation, Government Technology Services, Inc., Government Micro Resources, Inc., and Zycron Computer Services.

B5. Supplements to contracts with Government Technology Services, Inc, Tennessee Computer Specialist Inc., and Computer Consulting Operations for desktop systems.

B6. Contract with the United States General Services Administration for Federal Telecommunications System services.

B7. Contract with Siskin Steel & Supply Company for metals and fabrication services.

B8. Supplement to Contract No. P97X7A–141411–000 with Shook and Fletcher Insulation Company for insulation materials and related products.

B9. Supplement to Contract No. 98PYC–224423 with Telegyr Systems, Inc., for supervisory control and data acquisition system for the Transmission Power Supply Group.

E–Real Property

E1. Public Auction Sale of approximately 15.17 acres on Colbert Fossil Plant property for a water treatment plant, Tract No. XWSSP–6, and sale of a permanent easement affecting approximately 6.65 acres of Colbert Fossil Plant property for an access road, Tract Nos. XWSSP–7AR and XWSSP–8W; waterlines, Tract No. XPR–459W; and a pumping station, Tract No. XWSSP–9PS.

F–Unclassified

F1. Filing of condemnation cases to acquire permanent easements and rights-of-way for an electric transmission line at the Morrison-Manchester Tap to Red Hill, Coffee County, Tennessee, and the Davidson-Iron city transmission line, Williamson County, Tennessee.

Information Items

1. Approval to file condemnation cases affecting transmission lines at the East Cleveland-Charleston District, Bradley County, Tennessee, and Douglas Dam-Pigeon Forge Tap to East Sevierville, Sevier County, Tennessee.

2. Implementation of the results of negotiations with the Office and Professional Employees International Union (OPEIU) over compensation for annual and hourly employees.

3. Performance Success Award for Fiscal Year 1999.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: December 1, 1999.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 99–31649 Filed 12–2–99; 8:45 am]

BILLING CODE 8120–08–M

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Larry P. Bevan, Assistant Director for Management Trade and Development Agency, 1621 N. Kent Street, Arlington, VA 22209–2131, (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5), U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the Trade and Development Agency: Michael Kitay, Assistant General Counsel for Global Affairs, Office of the General Counsel, Agency for International Development; Rodney W. Johnson, Director, Office of Procurement, Bureau for Management, Agency for International Development; and Robert J. Kaiser, Director, Mid-Atlantic Regional Office, Export-Import Bank of the United States.

Dated; November 29, 1999.

Larry P. Bevan,

Assistant Director for Management.

[FR Doc. 99–31454 Filed 12–3–99; 8:45 am]

BILLING CODE 8040–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 7, 1999 [FR 64, pages 54720–54721].

DATES: Comments must be submitted on or before January 5, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or

Subject to State Motor Vehicle Administrative Procedures.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0543

Form(s): FAA Form 8500–8

Affected Public: 2222 pilots

Abstract: The requested information (1) is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, (2) is used to identify persons possibly unsuited for pilot certification, and (3) affects those pilots who have been convicted a drug or alcohol related traffic violation.

Estimated Annual Burden Hours: 370 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

COMMENTS ARE INVITED ON: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 30, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–31524 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 27, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. , 800 Independence Avenue, SW, Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 30, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29714.

Petitioner: State of Alaska.

Section of the FAR Affected: 14 CFR 107.14.

Description of Relief Sought: To permit Alaska Department of Transportation and Public Facilities (ADOT&PF) to comply with the security of air operations area requirements of § 107.13 rather than the access control system requirements of § 107.14 at 15 remote category III airports that ADOT&PF operates.

Docket No.: 29723.

Petitioner: Westjet Air Center, Inc..

Section of the FAR Affected: 14 CFR 61.3(a) and (c).

Description of Relief Sought: To permit Westjet pilots to carry written confirmation of Federal Aviation Administration-issued pilot or medical certificates provided by Westjet based on information in Westjet's approved record system.

Docket No.: CE155.

Petitioner: Raytheon Aircraft Company.

Section of the FAR Affected: 14 CFR 23.181(b).

Description of Relief Sought: To permit Raytheon Aircraft Company to certify the Model 390's lateral/directional dynamic handling characteristics to a requirement equivalent to 14 CFR Part 25, § 25.181, paragraph (b), instead of 14 CFR Part 23, § 23181 paragraphs (b) and (c).

Docket No.: 29721.

Petitioner: LET, a.s.

Section of the FAR Affected: 14 CFR C36.9(e)(1) of appendix C to part 36.

Description of Relief Sought: To permit LET to use a steady approach speed of V_{ref} + 10 knots rather than 1.30 V_s + 10 knots when demonstrating compliance with approach noise certification requirements for its L–610G airplane.

Dispositions of Petitions

Docket No.: 29758.

Petitioner: Taunton Airport Association, Inc.

Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.

Description of Relief Sought/Disposition: To allow the TAA to conduct local sightseeing flights at the Taunton Municipal Airport for the seventh annual TAA charity fundraising event on October 16, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/7/99, Exemption No. 7030.*

Docket No.: 29233.

Petitioner: Elite Aviation, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/Disposition: To permit Elite pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 10/5/99, Exemption No. 7018.*

Docket No.: 29251.

Petitioner: Alamo Jet, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/Disposition: To permit Alamo pilots to accomplish a line operational

evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 10/5/99, Exemption No. 7020.*

Docket No.: 29273.
Petitioner: Air Response, Inc.
Section of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought/Disposition: To permit Air Response, Inc. pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 10/7/99, Exemption No. 7026.*

Docket No.: 29273.
Petitioner: Crow Executive Air, Inc.
Section of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought/Disposition: To permit Crow Executive Air, Inc., pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 10/5/99, Exemption No. 7019.*

[FR Doc. 99–31525 Filed 12–3–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–42]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 27, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. , 800 Independence Avenue, SW, Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 30, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29820.
Petitioner: Bombardier Completion Centre, Inc.
Section of the FAR Affected: 14 CFR 25.785(b).
Description of Relief Sought: To permit the installation of side facing divan seats manufactured by BE–AMP in any BD700–1A10 Global Express airplane used for corporate transportation.

Docket No.: 29800.
Petitioner: Associated Air Center.
Section of the FAR Affected: 14 CFR 25.813(c).
Description of Relief Sought: To allow doors between passenger compartments on Boeing Model 757–23A and 757–2J4 airplanes.

Docket No.: 29722.
Petitioner: Flight Express, Inc.
Section of the FAR Affected: 14 CFR 135.243(c)(2).
Description of Relief Sought: To allow each of its pilots to act as pilot in command under instrument flight rules with a minimum of 800 hours of total flight time, including 330 hours of cross-country flight time, 70 hours of night flight time, and 50 hours of actual or simulated instrument flight time of which 30 hours were in actual flight, in lieu of the flight-time requirements of § 135.243(c)(2).

Dispositions of Petitions

Docket No.: 29827.
Petitioner: Gulfstream Aerospace Corporation.
Section of the FAR Affected: 14 CFR 25.815.
Description of Relief Sought/Disposition: To allow movement of passenger seats into the required aisle space under certain circumstances on Gulfstream Model G–V airplanes, serial numbers 554 through 583. *Partial Grant, 10/26/99, Exemption No. 7055.*

Docket No.: 29826.
Petitioner: Gulfstream Aerospace Corporation.
Section of the FAR Affected: 14 CFR 25.815.
Description of Relief Sought/Disposition: To allow movement of passenger seats into the required aisle space under certain circumstances on Gulfstream Model G–IV airplanes, serial numbers 1348 through 1390. *Partial Grant, 10/26/99, Exemption No. 7054.*

Docket No.: 29406.
Petitioner: Flight Services Group, Inc.
Section of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought/Disposition: To permit FSG pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 10/05/99, Exemption No. 7021.*

Docket No.: 29414.
Petitioner: North American Airlines.
Section of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/Disposition: To permit pilots of North American Airlines (NAA)—to act as pilots in supplemental operations conducted under part 121 after reaching their 60th birthday. *Denial, 9/3/99, Exemption No. 7037.*

Docket No.: 29615.
Petitioner: T-Bird Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought/Disposition: To permit T-Bird pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 10/5/99, Exemption No. 7017.*

Docket No.: 29540.
Petitioner: Airway Charter Service.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit ACS to operate its Piper PA–46–350P Malibu Mirage (Registration No. N715BB, Serial No. 4636038) under part 135 without a

TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 10/7/99, Exemption No. 7027.*

Docket No.: 29660.

Petitioner: NorthEastern Aviation Corporation.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/Disposition: To permit NorthEastern pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft. *Denial, 10/5/99, Exemption No. 7022.*

Docket No.: 29717.

Petitioner: Miami Air International.

Section of the FAR Affected: 14 CFR 121.344(b)(3).

Description of Relief Sought/Disposition: To permit Miami Air to install the required digital flight data recorder (DFDR) upgrade for one Boeing 717–200 (B–727–200) aircraft (Registration No. N803MA) in two phases instead of one with the final installation completed by January 30, 2000. *Grant, 10/5/99, Exemption No. 7016.*

Petition for Exemption

Docket No.: 29820.

Petitioner: Bombardier Completion Centre, Inc.

Regulations Affected: 25.785(b).

Description of Petition: To permit the installation of side facing divan seats manufactured by BE–AMP in any BD700–1A10 Global Express airplane used for corporate transportation.

Petition for Exemption

Docket No.: 29800.

Petitioner: Associated Air Center.

Regulations Affected: 25.813(e).

Description of Petition: To allow doors between passenger compartments on Boeing Model 757–23A and 757–2J4 airplanes.

[FR Doc. 99–31526 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Terrain Awareness and Warning System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication of Technical Standard Order (TSO)–C151a, Terrain Awareness and Warning System.

SUMMARY: The FAA has issued TSO–C151a, Terrain Awareness and Warning System, and canceled TSO–C151. The FAA has taken this action to clarify and correct certain paragraphs and tables that appeared in TSO–C151. The FAA has determined that the changes to TSO–C151a are of a clarifying and corrective nature, and that these changes do not alter the original intent of the airworthiness requirements of the paragraphs or tables being changed. Therefore, the FAA has taken this administrative action without using public comment process. However, the FAA will accept any comments about TSO–C151a and will consider them in any future revision to TSO–C151a. The changes are discussed below under the section titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Michelle Swearingen, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW, Washington, DC 20591, Telephone: (202) 267–3817, FAX: (202) 267–5340.

SUPPLEMENTARY INFORMATION:

Table 3.1, Appendix 1: The FAA has modified table 3.1 of appendix 1 to make it clearer and easier to use. These modifications include new notes to table 3.1 and appropriate modifications to the related test conditions in appendix 3. The specific modifications are described in the following discussion.

In table 3.1 the column titled TAWS(RTC) was changed to TAWS(RTC) DESCENDING. A new column titled TAWS(RTC) LEVEL FLIGHT was added between the column titled TERPS(ROC) and the column now titled TAWS(RTC) DESCENDING. The new column contains the following parameters: for enroute the parameter is 700 feet; for terminal, 350 feet; for approach, 150 feet; and for departure, 100 feet.

Note 2 was modified and corrected by retaining the ability to use a linear slope but by deleting the reference to a specific design criteria that does not meet the requirement of table 3.1. The note now reads as follows: As an alternate to the stepped down reduction from the terminal to approach phase in Table 3.1, a linear reduction of the RTC as the aircraft comes closer to the nearest runway is allowed, providing the requirements of Table 3.1 are met.

Two clarifying notes were added, note 3 and note 4. Note 3 reads as follows: During the visual segment of a normal instrument approach (typically about 1 NM from the runway threshold), the RTC should be defined/reduced to minimize nuisance alerts. Below a certain altitude or distance from the runway threshold, logic may be incorporated to inhibit the FLTA function. Typical operations below Minimum Descent Altitude (MDA), Decision Height (DH), or the Visual Descent Point (VDP) should not generate nuisance alerts. Note 4 reads as follows: The specified RTC values are reduced slightly for descending flight conditions to accommodate the dynamic conditions and pilot response times.

The related test conditions in appendix 3 were modified to be compatible with the modified table 3.1 of appendix 1. In paragraph 1.3, appendix 3, 700 replaced both 500 parameters. In paragraph 1.5, appendix 3, 350 replaced both 300 parameters. In paragraph 1.7, appendix 3, both 100 parameters were replaced with 150. In table B, appendix 3, for the 250 and 300 ground speed test runs, both 6000 parameters were replaced with 5800. In the same table B, all five 5500 parameters were replaced with 5700. In table D, appendix 3, all four 1300 parameters were replaced with 1350. In table F, appendix 3, all four 500 parameters were replaced with 550.

Section 3.3, Appendix 1: The FAA has modified the first paragraph of section 3.3 by clarifying when the GPWS functions may be adjusted or modified and by deleting general language that paraphrases FAA deviation policy. Deviations are addressed in paragraph 3.f of the basic TSO, and the use of deviations is applicable to the entire TSO document. The first paragraph of section 3.3 now reads as follows: In addition to the TAWS Forward Looking Terrain Avoidance and PDA functions, the equipment shall provide the GPWS functions listed below in accordance with TSO–C92c. Some GPWS alerting thresholds may be adjusted or modified to be more compatible with the FLTA alerting functions and to minimize GPWS nuisance alerts. However, it is essential to retain the independent protective features provided by both the GPWS and FLTA functions. In each case, all the following situations must be covered. The failure of the TSO C92c equipment functions, except for power supply failure, input sensor failure, or failure of other common portions of the equipment, shall not cause a loss of the FLTA, PDA, or Terrain Display.

Section 10.0, Appendix 1: The FAA has modified section 10.0 to clarify the use of alternate definitions for various phases of flight. The FAA also has removed reference to TSO–C129 and RTCA/DO–229. These documents are for GPS navigation operations and are not appropriate for TAWS operations.

Section 10.0 now reads as follows: The TAWS equipment search volumes and alerting thresholds should vary as necessary to be compatible with TERPS and other operational consideration. For that reason, a set of definitions is offered for Enroute, Terminal, Approach and Departure Phases of Flight. Other definitions for enroute, terminal and approach may be used by TAWS provided they are compatible with TERPS and standard instrument approach procedures and will comply with the test criteria specified in Appendix 3.

Tables A, C, and E; Appendix 3: The FAA has modified these tables by correcting certain parameters. Note 4 to table A, note 2 to table C and note 2 to table E state that the values are based upon 20 percent of the airplane's vertical velocity. However, a few values were calculated using a 20-second criteria instead of the 20 percent criteria. The corrected values are as follows: In column F of table A, the 2111 value was replaced with 1800. In column F of table C, the 1036 value was replaced with 900, and the 1456 value was replaced with 1100. In column F of table E, the 639 value was replaced with 550.

How To Obtain Copies: A copy of TSO–C151a may be obtained via Internet (http://www.faa.gov/avr/air/airhome.htm) or on request from the individual listed under the section titled **FOR FURTHER INFORMATION CONTACT**. REFERENCED DOCUMENTS: TSO–C151a references several RTCA, Inc. documents that contain specific requirements related to the TSO. RTCA Document No. DO–161A, ''Minimum Performance Standards—Airborne Ground Proximity Warning Equipment,'' dated May 27, 1976; DO–160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated July 29, 1997; DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' dated December 1, 1992; and DO–200A, ''Preparation, Verification and Distribution of User-Selectable Navigation Data Bases,'' dated November 28, 1988, may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on November 29, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–31523 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Extension of Comment Period, Petition for Grandfathering of Non-Compliant Equipment National Railroad Passenger Corporation

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant passenger equipment for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 59230. Interested parties were invited to comment on the petition before the end of the comment period of December 2, 1999.

FRA has received a request pursuant to the Freedom of Information Act, that certain items in FRA files and referenced in Amtrak's petition, be made available for review. FRA is currently reviewing the request and will provide such information in accordance with the provisions of the Freedom of Information Act. FRA will also submit to the public docket in this proceeding all such information provided to the requestor.

In order to provide an opportunity for the requestor, and other interested parties, to review the additional information, FRA is extending the comment period in this proceeding to December 15, 1999. Comments received after that date will be considered to the extent possible. Amtrak's petition and all written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on December 2, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–31648 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. OMCS–99–6480]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of petitions and intent to grant applications for exemption; request for comments.

SUMMARY: This notice announces the preliminary determination to grant the applications of 34 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before January 5, 2000.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Motor Carrier Research and Standards, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The Secretary has rescinded the authority previously delegated to the Federal Highway Administration to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation [64 FR 56270, October 19, 1999]. The new OMCS assumes the motor carrier functions previously performed by the FHWA's Office of Motor Carrier and Highway Safety (OMCHS). Ongoing rulemaking, enforcement, and other activities of the OMCHS, initiated while part of the FHWA, will be continued by the OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers.

Thirty-four individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the OMCS may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the OMCS has evaluated each of the 34 exemption requests on its merits, as required by 49 U.S.C. 31315 and 31136(e), and preliminarily determined that exempting these 34 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption. All of the drivers listed below meet all of the physical requirements in 49 CFR 391.41(b), except for the vision standard in 391.41(b)(10).

Qualifications of Applicants

1. Rodney D. Blaschke

Mr. Blaschke, 35, suffered a traumatic retinal scar in his right eye approximately 5 years ago, and his best corrected visual acuity in that eye is 20/400. He has 20/20 corrected vision in his left eye. In the ophthalmologist's opinion, Mr. Blaschke has sufficient vision to safely operate a commercial vehicle. Mr. Blaschke holds a Texas CDL. He has driven tractor-trailer combination vehicles for 14 years and more than 1.6 million miles and straight trucks for 2 years and over 240,000 miles. His official driving record for the past 3 years reflects no traffic violations and no accidents in a commercial vehicle.

2. Thomas B. Blish

Mr. Blish, 68, has been employed as a commercial truck driver for over 49 years. He lost the vision in his left eye as a result of injury during the Korean War and, therefore, cannot meet the vision requirement of 49 CFR 391.41(b)(10).

A 1999 examination indicates Mr. Blish has corrected visual acuity of 20/20 in his right eye, and his field of vision is full in that eye. In his ophthalmologist's opinion, Mr. Blish has ''sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Mr. Blish holds a Wisconsin CDL. He has driven tractor-trailer combinations 4.9 million miles over the last 49 years. His official driving record for the past 3 years reflects no traffic violations and no accidents in a commercial vehicle.

3. Ronnie Freamon Bowman

Mr. Bowman, 43, has amblyopia in his right eye and, therefore, is unable to meet the vision requirement in 49 CFR 391.41(b)(10). A 1999 examination reveals Mr. Bowman has 20/20 corrected vision in his left eye and 20/100 corrected vision in his right eye. The ophthalmologist who conducted the examination states that, based on Mr. Bowman's current level of vision, ''he is safe to operate a commercial vehicle.''

Mr. Bowman holds a Virginia CDL with a hazardous materials endorsement. He has driven straight trucks and tractor-trailer combinations approximately 1.4 million miles. His official driving record for the past 3 years contains no moving violations and no accidents in any vehicle.

4. James C. Bryce

Mr. Bryce, 54, has amblyopia in his left eye. The corrected vision in his left eye was 20/100 and 20/25 in his right eye in a 1999 examination. His optometrist says Mr. Bryce has sufficient vision to perform the driving tasks required to operate a CMV.

James Bryce holds a Michigan CDL. He has 20 years' experience driving tractor-trailer combinations, accumulating 2 million miles and 10 years' experience driving straight trucks for a total of 400,000 miles. His official State driving record contains no traffic violations and no accidents in any vehicle in the past 3 years.

5. Thomas L. Corey

Mr. Corey, 45, suffered a traumatic injury to his right eye during childhood. His best corrected vision in the right eye is 20/400. His corrected vision in the left eye is 20/15, according to a 1999 examination. His optometrist states, ''it is my medical opinion that Tom Corey has sufficient vision to perform the driving tasks to operate a commercial vehicle.''

Thomas Corey holds an Indiana CDL. He has driven tractor-trailer combination vehicles for 14 years and over 728,000 miles. His official State driving record reveals no traffic citations or accidents in any vehicle in the last 3 years.

6. James D. Davis

Mr. Davis, 47, has amblyopia in his left eye. The vision in his right eye is 20/20 without correction. According to his optometrist, ''Mr. Davis has sufficient vision to perform the tasks required to operate a commercial vehicle.''

James Davis holds an Ohio CDL. He has driven straight trucks for 7 years and tractor-trailer combinations for 1 year for a total of over 380,000 miles. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

7. Glenn Gee

Mr. Gee, 49, has been blind in his right eye since 1973 when his eye was removed due to a history of injuries. An ophthalmologist examined Mr. Gee in 1999 and found his best corrected vision is 20/20 in the left eye. According to the ophthalmologist, Mr. Gee has been operating a commercial vehicle for many years and should be able to continue to perform the driving tasks required, as he has noticed no change in his vision.

Glenn Gee has operated straight trucks and tractor-trailer combinations for 29 years, accumulating one million miles. He holds a Texas CDL, and his official driving record for the past 3 years reflects no moving violations and no accidents in a CMV.

8. Lloyd E. Hall

Mr. Hall, 67, has had a prosthetic left eye for over 30 years. He has 20/20 corrected vision in his right eye, according to a 1999 examination. The optometrist who conducted the

examination indicates Mr. Hall has sufficient vision to drive a CMV.

Mr. Hall has a 38-year career operating straight trucks and tractor trailer combination vehicles more than 1 million miles. He has driven buses for 2 years and 20,000 miles. He holds an Illinois CDL and has had one speeding violation and no accidents in the past 3 years in a CMV.

9. Byron Dale Hardie

Mr. Hardie, 41, has amblyopia in his left eye. He has 20/20 corrected vision in his right eye, according to a 1999 examination. The ophthalmologist who conducted the examination asserts Mr. Hardie has adequate vision to drive a CMV.

Mr. Hardie has an Alabama CDL. He has driven straight trucks for 21 years for more than 300,000 miles. His official State driving record for the past 3 years contains no traffic violations and no accidents in a commercial vehicle.

10. Robert N. Heaton

Mr. Heaton, 58, has 20/50 corrected vision in his right eye due to a detached retina. A 1999 examination indicates the vision in his left eye is 20/20 with glasses. The ophthalmologist says that Mr. Heaton has sufficient vision to operate a CMV.

Mr. Heaton has a Washington CDL. He has driven tractor-trailer combination vehicles for 41 years and over 2.25 million miles. There are no traffic violations or accidents in any vehicle in the past 3 years on his official driving record.

11. Edward E. Hooker

Mr. Hooker, 47, is blind in his left eye due to penetrating trauma approximately 43 years ago. A 1999 examination indicates Mr. Hooker has 20/15 corrected vision in his right eye with full horizontal field of vision. According to the optometrist, Mr. Hooker ''has the visual capability to operate a commercial vehicle.''

Mr. Hooker holds a North Carolina CDL. He has driven tractor-trailer combinations nearly 3 million miles during a 29-year career. His official State driving record reveals one conviction for a traffic violation in a CMV in the last 3 years. The charge was failure to yield right of way to another vehicle in 1997. Mr. Hooker's driving record shows no accidents in a CMV in the last 3 years.

12. James M. Irwin

Mr. Irwin, 58, has traumatic optic neuropathy in his right eye with visual acuity limited to 20/240. A 1999 examination indicates Mr. Irwin has 20/20 visual acuity in his left eye. According to his ophthalmologist, ''Mr. Irwin has sufficient vision to perform driving tasks as required to operate a commercial vehicle.''

Mr. Irwin holds a Montana CDL. He has driven tractor-trailer combination vehicles for 10½ years and straight trucks for 2 years for a total of more than 500,000 miles. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

13. Laurent G. Jacques

Mr. Jacques, 54, has operated tractor-trailer combinations for 34 years. Because he has a congenital cataract in his right eye, he is unable to meet the vision requirement in 49 CFR 391.41(b)(10). A 1999 examination by an ophthalmologist reveals Mr. Jacques's best-corrected vision in his left eye is 20/20. In the ophthalmologist's opinion, Mr. Jacques has sufficient vision to operate a CMV safely.

Mr. Jacques holds an Massachusetts CDL. He has driven tractor-trailer combinations for 34 years and more than 1 million miles, and his official driving record for the past 3 years contains no traffic violations or accidents in a CMV.

14. Alfred G. Jeffus

Mr. Jeffus, 56, has been driving straight trucks approximately 312,000 miles per year for the past 6 years and tractor-trailer combination vehicles for 5 years and approximately 650,000 miles. Mr. Jeffus holds an Oregon CDL. He has had a macular scar in the left eye since 1969. His vision is 20/15 in the right eye. According to his optometrist, Mr. White has sufficient vision to operate a CMV. His official driving record shows no accidents in any vehicle over the last 3 years and 2 convictions for non-serious speeding violations in a commercial vehicle, as defined in 49 CFR 383.5.

15. Oskia Johnson

Mr. Johnson, 57, has decreased visual acuity (light perception only) in his left eye as the result of an injury over 20 years ago and scarring of the cornea after cataract surgery. A 1999 medical report indicates he has 20/20 vision in his right eye with correction. In his ophthalmologist's opinion, Mr. Johnson is capable of operating a CMV.

Oskia Johnson has 14 years' experience operating straight trucks, accumulating almost 350,000 miles. He has an Indiana CDL, and his official driving record reveals no traffic citations or accidents in any vehicle in the past 3 years.

16. Michael W. Jones

Mr. Jones, 37, is blind in his left eye due to an injury suffered when he was a child. The vision in his right eye is 20/20 with correction, according to a 1999 examination. His optometrist says he has adequate vision to operate a commercial vehicle.

Michael Jones holds an Illinois CDL. He has driven tractor-trailer combinations for 11 years and over 990,000 miles. His official driving record contains no accidents or traffic violations in any vehicle during the last 3 years.

17. Don R. Kennedy

Mr. Kennedy, 48, has decreased visual acuity (no light perception) in his left eye which is stable and has been present for the last 30 years. A 1999 medical examination indicates that he has 20/20 corrected acuity in his right eye. According to his optometrist, Mr. Kennedy has sufficient vision to operate a commercial vehicle.

Mr. Kennedy has been a professional truck driver for 30 years and has driven straight trucks and tractor-trailer combinations a total of more than 3 million miles. He holds a Missouri CDL. A review of his State driving record indicates no moving violations and no accidents in any vehicle in the last 3 years.

18. Dennis E. Krone

Mr. Krone, 45, has been employed as a commercial truck driver for more than 20 years driving tractor-trailer combinations and straight trucks. He has a history of amblyopia in his right eye. Mr. Krone has 20/20 vision in his left eye with correction. In the optometrist's opinion, Mr. Krone ''has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Krone holds an Illinois CDL. He has driven commercial vehicles more than 1.2 million miles. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

19. James F. Laverdure

Mr. Laverdure, 51, has amblyopia in his right eye. A 1999 medical report indicates Mr. Laverdure's best corrected vision is 20/20 in the left eye. The optometrist states, ''Since Mr. Laverdure has been a commercial truck driver for many years, I see no medical reason why he would not have sufficient vision to continue to operate a commercial vehicle.''

He has driven straight trucks for 28 years and tractor-trailer combination vehicles for 15 years, accumulating more than 2 million miles. Mr.

Laverdure holds a Wyoming CDL and his driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

20. Christopher P. Lefler

Mr. Lefler, 29, has amblyopia in his right eye. A 1999 examination revealed Mr. Lefler has 20/20 uncorrected vision in his left eye. According to the optometrist, Mr. Lefler has sufficient vision to perform the driving tasks required to operate a commercial vehicle.

Christopher Lefler holds an Arizona CDL with a tank vehicles endorsement. He has driven tractor-trailer combination vehicles for 5 years and over 125,000 miles and straight trucks for 1 year and 25,000 miles. There is one accident in a commercial vehicle on his official driving record in the past 3 years. Mr. Lefler was stopped when the vehicle on his right attempted to change lanes and collided with the front end of his vehicle. He was issued two citations for non-moving violations—failure to carry registration and proof of insurance. The other driver was at fault and received a citation for failure to stay in lane/unsafe lane change. No moving violations in a commercial vehicle in the last 3 years were found on Mr. Lefler's driving record.

21. David R. Linzy

Mr. Linzy, 50, has amblyopia. He has 20/20 vision in his right eye with correction and full horizontal field of vision. An ophthalmologist examined him in 1999 and stated ''Mr. Linzy can safely drive a commercial truck with side mirrors.''

David Linzy has 33 years of experience operating straight trucks and 28 years of experience operating tractor-trailer combinations, accumulating more than 2.8 million miles. He holds a Kentucky Class DA OPR/CDL license which requires his CMV to have side mirrors. His official State driving record contains one weather-related accident in a commercial vehicle in which Mr. Linzy slid off the road under icy conditions. No citation was issued in the incident. The driving record also shows 2 non-serious speeding violations in a commercial vehicle in 1996.

22. Richard Joseph Madler

Mr. Madler, 33, has been blind in his right eye since he was 9 years old. A 1999 medical examination indicates he has 20/15 corrected vision in his left eye. In the optometrist's opinion, ''Mr. Madler possesses sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Richard Madler holds a Montana CDL with hazardous materials and tank vehicles endorsements. He has operated straight trucks for 17 years and tractor-trailer combinations for 9 years for approximately one million miles. His official State driving record reflects no moving violations and no accidents in any vehicle in the last 3 years.

23. Earl E. Martin

Mr. Martin, 29, has amblyopia of the left eye. A 1999 examination by an optometrist revealed the corrected vision in his right eye to be 20/15. The optometrist stated Mr. Martin ''has sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Mr. Martin holds a Virginia CDL. He has operated straight trucks for 7 years and 350,000 miles and tractor-trailer combination vehicles for 6 months. His official State driving record reflects no traffic citations and no accidents in any vehicle for the past 3 years.

24. David P. McCabe

Mr. McCabe, 41, has operated straight trucks for 8½ years. He suffered a traumatic injury to his right eye which resulted in ''counting finger vision'' in that eye.

He is, therefore, unable to meet the vision requirement in 49 CFR 391.41(b)(10). A 1999 examination by an ophthalmologist reveals Mr. McCabe has 20/15 vision in his left eye. In the ophthalmologist's opinion, Mr. McCabe has sufficient vision to operate a CMV.

David P. McCabe holds a New Hampshire CDL. He has driven straight trucks for over 380,000 miles, and his official driving record for the past 3 years reveals no accidents and no traffic violations in a commercial vehicle.

25. Richard John McKenzie, Jr.

Mr. McKenzie, 36, has amblyopia in his right eye. A 1999 examination by an ophthalmologist revealed the vision in his left eye to be 20/20. The optometrist stated ''Mr. McKenzie undoubtedly has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.''

Mr. McKenzie holds a Maryland CDL. He has operated straight trucks for 18 years for 218,000 miles. His official State driving record reflects no traffic citations and no accidents for the past 3 years.

26. Kenneth R. Piechnik

Mr. Piechnik, 51, has amblyopia in his left eye. An optometrist examined Mr. Piechnik in 1999, and found his best corrected vision in the right eye is 20/20. The optometrist states that Mr. Piechnik has sufficient vision to perform the driving tasks required to operate a commercial vehicle.

Kenneth Piechnik has operated tractor-trailer combinations for 19 years and approximately 1.9 million miles and straight trucks for 7 years and approximately 175,000 miles. He holds a Missouri CDL. His official driving record for the past 3 years reflects no citations or accidents in any vehicle.

27. Tommy L. Ray, Jr.

Mr. Ray, 26, suffered a severe injury to his right eye in 1993 leaving ''light perception only'' vision in that eye. According to a 1999 examination, the vision in his left eye is 20/20 without correction. His optometrist says Mr. Ray has sufficient vision to perform the tasks necessary to operate a CMV.

Mr. Ray holds an Alabama CDL. He has 5 years' experience driving straight trucks over 140,000 miles. His official State driving record contains no traffic violations and no accidents in any vehicle in the past 3 years.

28. William A. Reyes

Mr. Reyes, 39, suffered trauma to his left eye in 1984 and wears a prosthesis. Vision in the right eye is 20/20 corrected, according to a 1999 examination. His ophthalmologist states, ''Mr. Reyes has sufficient vision in his right eye to drive a commercial vehicle if the appropriate regulatory agency allows an individual with monocular (one eye) vision to drive a commercial vehicle.''

William Reyes has a Florida CDL. He has 19 years experience operating tractor-trailer combinations and has driven CMVs nearly 1 million miles. His official State driving record reveals one traffic citation in a CMV for violation of a traffic control device and no accidents in any vehicle in the past 3 years.

29. Carl A. Sigg

Mr. Sigg, 30, has amblyopia of the right eye. Because of this eye condition, Mr. Sigg is unable to meet the Federal vision requirement. He has 20/15 vision in his left eye, according to a 1999 examination. In his optometrist's opinion, Mr. Sigg has sufficient vision to be ''certifiable for driving a commercial vehicle without any restrictions.''

Carl A. Sigg holds a New York CDL. He has been a professional truck driver for 8 years operating straight trucks and approximately 576,000 miles. His official State driving record contains no moving violations and no accidents in any vehicle in the last 3 years.

30. Sammy D. Steinsultz

Mr. Steinsultz, 52, has been employed as a commercial truck driver for 35 years driving straight trucks and 4 years driving tractor-trailer combination vehicles. According to his optometrist, Mr. Steinsultz has a prosthetic right eye as the result of an accident in 1976. As a result, he cannot meet the vision requirement of 49 CFR 391.41(b)(10).

A March 1999 medical report indicates Mr. Steinsultz's best corrected vision is 20/20 in the left eye. The optometrist states, ''I see no visual reason for him [Mr. Steinsultz] not to be able to very safely operate a commercial vehicle.''

He has driven straight trucks for more than 70,000 miles and tractor-trailer combinations for over 360,000 miles. Mr. Steinsultz holds an Illinois CDL, and his driving record for the past 3 years reflects no traffic violations and no accidents in a commercial vehicle.

31. Edward J. Sullivan

Mr. Sullivan, 57, suffered trauma to his right eye in 1978. A 1999 examination indicates the best corrected vision in his left eye is 20/15. His optometrist says, ''In my opinion, Mr. Sullivan has more than sufficient vision to operate a *commercial* vehicle.''

Mr. Sullivan has a New Hampshire CDL. He has driven straight trucks and tractor-trailer combinations for 40 years. He has driven straight trucks over 1.2 million miles and tractor-trailer combinations over 400,000 miles. His official State driving record for the past 3 years contains no traffic violations and no accidents in any vehicle.

32. John C. Vantaggi

Mr. Vantaggi, 49, has had a prosthetic right eye since the age of 9 as the result of an accident. A 1999 examination indicates the best corrected vision in his left eye is 20/20. His optometrist says that his ''vision is stable and has sufficient vision to operate a commercial vehicle with dual mirrors.''

Mr. Vantaggi has a Pennsylvania CDL with hazardous materials and tank vehicles endorsements and a requirement for dual mirrors. He has driven straight trucks for 15 years and tractor-trailer combinations for 16 years, accumulating over 880,000 miles. His official State driving record for the past 3 years contains no traffic violations and no accidents in a CMV.

33. Winston Eugene White

Mr. White, 34, suffered trauma in his left eye over 15 years ago. A 1999 medical examination indicates that he has 20/20 acuity in his right eye and light perception in his left eye. According to his ophthalmologist, ''the visual condition is stable and has not impaired Winston's ability to operate a commercial vehicle over the last fifteen years and I don't think he will have problems in the future.''

Mr. White has driven straight trucks for 9 years and over 450,000 miles, tractor trailer combination vehicles for 9 years and 450,000 miles and buses for 1 year and 4,000 miles.

He holds a Georgia CDL, and a review of his State driving record indicates no moving violations and no accidents in any vehicle in the last 3 years.

34. Turgut T. Yilmaz

Mr. Yilmaz, 33, has poor vision in his right eye secondary to a failed corneal transplant performed in 1994 after trauma. A 1999 medical examination indicates he has 20/20 vision in his left eye with correction. In the ophthalmologist's opinion, Mr. Yilmaz has sufficient vision to operate a CMV.

Turgut Yilmaz holds a New York CDL with hazardous materials and tank vehicles endorsements. He has driven tractor-trailer combinations more than 990,000 miles over the last 11 years, and his official driving record for the past 3 years contains no accidents and one speeding violation in a commercial vehicle.

Basis for Preliminary Determination To Grant Exemptions

Independent studies support the principle that past driving performance is a reliable indicator of an individual's future safety record. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 34 applicants represented here have qualifications similar to those possessed by drivers in the waiver program. Their experience and safe driving record operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. Since past driving records are reliable precursors of the future, there is no reason to expect these individuals to drive less safely after receiving their exemptions. Indeed, there is every reason to expect at least the same level of safety, if not a greater level, because the applicants can have their exemptions revoked if they compile an unsafe driving record.

For these reasons, the OMCS believes exempting the individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in § 391.41(b)(10). As a condition of the exemption, therefore, the OMCS proposes to impose requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are: (1) That each individual be physically examined every year (a) By an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) By a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) That each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) That each individual provide a copy of the annual medical certification to his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the OMCS. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) The exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) Continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the OMCS for a renewal under procedures in effect at that time.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the OMCS is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All

comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the OMCS may issue exemptions from the vision requirement to the 34 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the OMCS will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 31136 and 31315; 49 CFR 1.73.

Issued on: November 29, 1999.

Julie Anna Cirillo,

Acting Director, Office of Motor Carrier Safety.

[FR Doc. 99–31447 Filed 12–3–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33825]

Wisconsin Chicago Link Ltd.—Acquisition Exemption—Wisconsin Central Ltd.

Wisconsin Chicago Link Ltd. (WCLL), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire from Wisconsin Central Ltd. (WCL) approximately 4.1 miles of rail line (the Forest Park Line) extending between milepost 10.9 in Forest Park, IL, and milepost 15.0 in Franklin Park, IL.[1] WCL will retain trackage rights over the Forest Park Line, which lies within the Chicago terminal district and connects at Forest Park with the west end of the Altenheim Subdivision of The Baltimore & Ohio Chicago Terminal Railroad Company (B&OCT), a subsidiary of CSX Transportation, Inc. WCL's primary Chicago-area yard facility, Schiller Park Yard, lies north of Franklin Park.

WCLL and WCL are wholly owned subsidiaries of Wisconsin Central Transportation Corporation (WCTC). WCLL previously filed a notice of exemption to lease approximately 1.9 miles of rail line (the Panhandle Line) of the former Pittsburgh Cincinnati, Chicago & St. Louis Railroad Company in Chicago, Cook County, IL. *See Wisconsin Chicago Link Ltd.—Lease Exemption—Pennsylvania Lines LCC,* STB Finance Docket No. 33810 (STB served Nov. 8, 1999). The Panhandle Line connects with the east end of the B&OCT Altenheim Subdivision.

WCLL states in its notice that, due to unforeseen delays, execution of the Panhandle Line lease will not occur in accordance with the schedule previously contemplated. WCLL further states that, because it will become a carrier upon consummation of the Forest Park Line acquisition, the exemption that it obtained in STB Finance Docket No. 33810 to lease the Panhandle line as a noncarrier will no longer be appropriate. Accordingly, on November 19, 1999, WCLL concurrently filed with this notice, a letter of withdrawal of its verified notice of exemption in STB Finance Docket No. 33810.

At the time of filing of this notice, an asset purchase agreement between WCLL and WCL providing for WCLL's acquisition of the Forest Park Line and WCL's retention of trackage rights on that line was expected to be finalized and executed within a week.[2]

WCLL indicates that WCTC will shortly be filing a petition for exemption in a related proceeding in STB Finance Docket No. 33811, *Wisconsin Central Transportation Corporation—Continuance in Control Exemption—Wisconsin Chicago Link Ltd.*, wherein WCTC will seek to continue in control of WCLL[3] once it acquires the Forest Park Line and becomes a carrier.

The transaction was expected to be consummated on or shortly after November 26, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33825, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Janet H. Gilbert, 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 29, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–31553 Filed 12–3–99; 8:45 am]

BILLING CODE 4915–00–P

[1] WCLL states that its revenues will not exceed those that would qualify it as a Class III rail carrier and its revenues are not projected to exceed $5 million.

[2] WCL will initially continue to provide operations on the Forest Park Line pursuant to retained trackage rights.

[3] Pending a Board decision granting WCTC's petition for exemption to control WCLL, the stock of WCLL will be placed in an independent voting trust established in accordance with 49 CFR 1013.

federal register

Monday
December 6, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 270

Bonus to Reward States for High Performance; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 270

RIN 0970–AB66

Bonus to Reward States for High Performance

AGENCY: Administration for Children and Families, HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) is proposing both work and non-work measures and a funds allocation formula for awarding bonuses in FY 2002 and beyond to high performing States under the Temporary Assistance for Needy Families Block Grant (TANF program). We are proposing to award bonuses based on four work measures (substantially the same work measures currently in effect for the FY 1999 and FY 2000 awards) and three non-work measures. These are: One measure on family formation and family stability (increase in the number of children below 200 percent of poverty who reside in married couple families); and two measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program and participation in the Medicaid and Children's Health Insurance Programs.

We are inviting public comment on both the proposed provisions and on the development and use of additional measures, data sources, and other provisions. Bonus funds of up to $200 million each year are authorized for awards in fiscal years 1999 through 2003. The amount awarded to each high performing State may not exceed five percent of the State's family assistance grant. Earlier, we issued program guidance covering bonus awards in FY 1999 and FY 2000. Guidance will also be issued for the FY 2001 bonus awards.

DATE: You must submit comments by February 4, 2000.

ADDRESSES: You may mail comments to the Administration for Children and Families, Office of Planning, Research and Evaluation, 7th Floor West, 370 L'Enfant Promenade, SW, Washington, DC 20447. You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the ACF Welfare Reform Home Page at http://www.acf.dhhs.gov/news/welfare/ and follow any instructions provided. You may also hand-deliver comments at the street address below.

We will make all comments available for public inspection at the Office of Planning, Research and Evaluation, 7th Floor West, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9 a.m. and 4 p.m. EST. (This is the street address, as opposed to the mailing address above.)

We will only accept written comments. In addition, all your comments should:

- Be specific;
- Address only issues raised by the proposed rule, not the law itself;
- Where appropriate, propose alternatives;
- Explain reasons for any suggestions, objections, or recommended changes; and
- Where possible, reference the specific section of the proposed rule that you are addressing.

We will not acknowledge the individual comments we receive. However, we will review and consider all comments that are germane and are received during the comment period.

FOR FURTHER INFORMATION CONTACT: Sean Hurley, Director, Division of Data Collection and Analysis, Office of Planning, Research and Evaluation, ACF, at 202–401–9297.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

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I. Legislative and Regulatory Background

A. The Temporary Assistance for Needy Families Program

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, established the Temporary Assistance for Needy Families (TANF) program at title IV–A of the Social Security Act (the Act). TANF is a block grant program designed to make dramatic reforms in the nation's welfare system. Its focus is on moving recipients into work and turning welfare into a program of temporary assistance, preventing and reducing the incidence of out-of-wedlock births, and promoting stable two-parent families. Other key features of TANF include provisions that emphasize program accountability through financial penalties and rewards for high performance.

TANF replaced the national welfare program known as Aid to Families with Dependent Children (AFDC) which provided cash assistance to needy families on an entitlement basis. It also replaced the related programs known as the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program.

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date. We published a Notice of Proposed Rulemaking (NPRM) to implement the work, penalties, and data collection provisions of the TANF program in the **Federal Register** on November 20, 1997 (62 FR 62124). A final TANF rule was published April 12, 1999 (64 FR 17720). We have also published a number of other related regulations, including rules covering annual reports of State child poverty rates in relation to the TANF program (NPRM published September 23, 1998 (63 FR 50837) and bonuses to reward decreases in illegitimacy (final rule published April 14, 1999 (64 FR 18484)).

The new law reflects widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from welfare to work.
- Child support programs should become tougher and more effective in securing support from noncustodial parents.
- Because many factors contribute to poverty and dependency, solutions to these problems should not be ''one size fits all.'' The system should allow States, Indian tribes, and localities to develop diverse and creative responses to these problems.
- The Federal government should place more emphasis on program results.

Under section 401(a)(1) of the Act, States (and certain Indian tribes) have the authority to use Federal welfare funds ''in any manner that is reasonably calculated to accomplish the purpose'' of the new program. It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate. In short, it offers States an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments.

B. Summary of the Statutory Provisions Applicable to the High Performance Bonus

Section 403(a)(4) of the Act requires the Secretary to award bonuses to ''high performing States.'' (Indian tribes are not eligible for these bonuses.) The term ''high performing State'' is defined in section 403(a)(4)(E) to mean those States that are most successful in achieving the goals and purposes of the TANF program as specified in section 401(a) of the Act. These goals and purposes are to—

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) Encourage the formation and maintenance of two-parent families.

Section 403(a)(4)(B) specifies that the bonus award for a fiscal year will be based on a State's performance in the previous fiscal year and may not exceed five percent of the State's TANF grant.

The statute at section 403(a)(4)(C) requires the Department to develop a formula for measuring State performance. This formula must be developed in consultation with the National Governors' Association (NGA) and the American Public Welfare Association, now the American Public Human Services Association (APHSA).

Section 403(a)(4)(D) requires the Secretary to use the formula developed to assign a score to each eligible State for the fiscal year preceding the bonus year and prescribe a performance threshold as the basis for awarding the bonus. Section 403(a)(4)(D) also specifies that $1 billion (or an average total of $200 million each year) will be awarded over five years, beginning in FY 1999.

C. External Consultation

As we have done with all regulations related to the TANF program, we implemented a broad consultation strategy prior to drafting these proposed regulations. In addition, as required by section 403(a)(4)(C), we consulted intensively with representatives of the NGA and the APHSA on the development of provisions for awarding high performance bonus funds. We met with staff of these two national organizations as well as staff of the National Conference of State Legislatures (NCSL) and approximately 30 representatives of States who participated by conference call hookup on a regular basis over a period of approximately nine months.

We want to express our appreciation to these national organizations and to the representatives of their State members who provided expert information, analysis, and in-depth programmatic knowledge. We also appreciated the commitment they displayed and their willingness to approach these discussions in such a collegial manner.

We also consulted with a number of other audiences: Researchers, data experts, and academics; other Federal and non-Federal agencies which had developed or were in the process of developing performance measures for their programs; and representatives of a broad range of non-profit, advocacy, and community-based programs.

These consultations were very useful in helping us identify key issues, evaluate policy options, develop the program guidance that will be used to award bonuses in FY 1999 and FY 2000, and formulate the proposals set forth in this NPRM. (The program guidance for the awards to be made in FY 1999 is found in TANF–ACF–PI–98–1 and TANF–ACF–PI–98–5; the guidance for the FY 2000 awards is found in TANF–ACF–PI–99–1, March 3, 1999.)

We would like to emphasize that we are publishing these regulations as a proposed rule. Thus, all interested parties have the opportunity to state their views and react to the specific policies we are proposing for awards in FY 2002 and FY 2003 (and any subsequent fiscal years for which Congress authorizes and appropriates funds). We will review all comments we receive during the comment period and take them into consideration before issuing a final rule.

D. Reader-Friendly Regulations

In its latest Document Drafting Handbook, the Office of the Federal Register supports the efforts of the National Partnership for Reinventing Government to encourage Federal agencies to produce more reader-friendly regulations and to use plain language in developing all new documents and regulations. In drafting this proposed rule, we have paid close attention to this guidance and tried to draft a rule that achieves these goals.

II. Background: Increasing Use of Performance Measurement

The TANF provisions for a high performance bonus and a bonus to reward a decrease in State illegitimacy ratios represent only two recent examples of Administration and Congressional efforts to increase accountability and reward performance among federally-funded programs. These bonus provisions also reflect a growing interest in and movement toward the use of performance measurement by both the public and the private sector. The list below includes examples of such efforts and initiatives that we reviewed as a part of the development of this NPRM. It also provides historical and substantive context for public review of the measures we have proposed in the NPRM.

A. Federal Activities

- The National Performance Review (now the National Partnership for Reinventing Government), under the leadership of the Vice President, has emphasized customer service standards, benchmarking against the best in the business, and rewarding outstanding results achieved by Federal agencies and offices.

• In May 1997, the National Partnership for Reinventing Government identified 31 ''Reinvention Impact Centers'' (now ''High Impact Agencies'') to implement identified improvements. It selected the Administration for Children and Families (ACF) as one of 19 agencies to achieve measurable goals by October 2000. ACF's performance is being measured against four ''high impact goals.''

• Congress enacted the Government Performance and Results Act of 1993 (GPRA) to create a comprehensive strategic planning and performance measurement system for the Federal government. Under this law, all Federal agencies must develop multi-year strategies, identify long-term goals and objectives, and prepare annual performance plans on a program-by-program basis. To the extent feasible, the levels of performance and specific indicators must be objective, quantifiable, measurable, and focused on outcomes and accomplishments rather than activities and processes.

• One of the early GPRA pilot programs, the Office of Child Support Enforcement (OCSE) in ACF, worked with States to reach consensus on national goals and objectives, and OCSE then negotiated voluntary performance agreements with each State specifying intended program outcomes for establishing paternities and obtaining child support orders and collections.

• In the Welfare Indicators Act of 1994, Congress required the Department to measure and report annually on indicators of welfare receipt in three Federal means-tested programs: AFDC, Supplemental Security Income (SSI), and the Food Stamp program. The purpose of the report is to provide the public with generally accepted data in order to evaluate the progress of reducing the rate and duration of welfare receipt.

• Congress included in the Balanced Budget Act of 1997, Pub. L. 105–33, a provision authorizing the Department of Labor to award performance bonuses in the Welfare-to-Work program. (See Notice of Welfare-to-Work performance bonus criteria, published November 23, 1998 (63 FR 64832).) This legislation specified that 50 percent of funds for job placement contracts be held until an individual has been on the job for at least six months.

• Since 1982, the Job Training Partnership Act program has required States and local service agencies to report data on client outcomes and has provided corresponding incentives and sanctions on the basis of that outcome data.

• ''Healthy People 2000,'' initiated in 1985, represents an early effort by DHHS to develop a national prevention strategy for improving the health of the American people. This strategic plan defines broad goals and targeted objectives in 22 priority areas and involves a national consortium of nearly 300 national membership organizations, all State Health Departments, and others working to achieve these goals. The Department is currently developing the next ten-year plan, ''Healthy People 2010.'' We expect the new plan to include 26 national objectives.

• The Federal Interagency Forum on Child and Family Statistics, formally established by Executive Order in April 1997, issues an annual data report, ''America's Children: Key National Indicators of Well-Being,'' that uses Federal statistical data to monitor the well-being of the Nation's children. Twenty-five key indicators cover a wide range of conditions that impact children, including economic security, health, behavioral and social environment, and education.

• The Department is using Public Health Performance Partnerships as a new way of managing grant relationships with States for programs within the Substance Abuse and Mental Health Services Administration and the Centers for Disease Control and Prevention. These Partnerships will identify performance measures to clarify program goals and objectives and document specific performance. They offer States increased flexibility in program management but require an account of the results achieved.

• Child Trends, Inc., a private research organization, prepares an annual report entitled ''Trends in the Well-Being of America's Children and Youth'' for the DHHS Office of the Assistant Secretary for Planning and Evaluation.

B. Non-governmental Activities

Non-governmental groups are also providing leadership in highlighting policy and program issues and pressing for accountability and performance measurement. For example—

• A national foundation, the Annie E. Casey Foundation, has provided funds since 1985 to create an annual data book on child and family well-being that focuses on indicators of State-level performance. The ''KIDS COUNT DATA BOOK'' enables States and others to compare the status of ten indicators of child well-being. The Casey Foundation also issues ''CITY KIDS COUNT,'' a data book on the well-being of children in large cities.

• The United Way of America has established a resource network to assist local United Ways in implementing systems for measuring local program performance.

• A citizen's group in Los Angeles publishes the mortality rates for patients of individual physicians.

• In Florida, a taxpayer's organization regularly reports measures of productivity and performance by State agencies.

• Case Western Reserve University's Center on Urban Poverty and Social Change compiles community data from roughly 20 sources into a publicly-accessible database for the Cleveland, Ohio area.

• The Citizen's League of Greater Cleveland publishes ''Rating the Region,'' which compares that metropolitan area with 25 others on a variety of measures, from the strength of its business climate to the quality of its education system and government. (Citizens groups in Jacksonville, Pittsburgh, St. Louis, Seattle, and Philadelphia have also published regional comparisons.)

C. State and Local Governmental Activities

• In the late 1980s and early 1990s, some States took the lead in developing State benchmarks or measurement goals to guide public policy and public expenditures. The ''Oregon Option'' and ''Minnesota Milestones'' are examples of State-wide efforts that include executive and legislative involvement as well as extensive citizen input.

• An August 1997 National Governors' Association report found that 20 States were establishing performance standards for their entire workforce development systems.

• Some State and local governments are innovators in their efforts to manage based on performance. For example, Ohio counties can select various consolidation of funding and spending options. ''Partnership counties,'' for example, operate under an agreement that provides incentive funds for performance measures such as exceeding the all family or the two-parent participation rate or decreasing out-of-wedlock births.

• Several States are contracting with private organizations to provide employment-related assistance and services, basing payment on performance.

• The Wisconsin Works (W–2) program has established performance benchmarks for local welfare agencies and allows outside contractors and non-profit organizations to compete for service contracts in those cases where

local agencies fail to meet performance goals. The W–2 program also provides funding incentives. Counties receive 80 percent of their annual budget on a cost reimbursement basis. The balance of the funds is placed in a statewide pool from which counties are rewarded based on performance, e.g., the number of persons entering full-time employment.

• A recent report from Mathematica Policy Research, Inc., details the Pennsylvania Department of Welfare's early experiences with implementing the ''Community Solutions'' initiative, a set of voluntary programs operated throughout the State to provide pre-and post-employment services to TANF recipients. This initiative is performance based; contractors receive payment based on the number of clients who achieve specific employment goals such as placement in full-time employment, placement in a job that offers medical benefits within six months of hire, and continuous employment for at least 12 months after placement.

III. Major Issues in Developing Performance Measures

In implementing the high performance bonus provision, we faced a significant challenge in developing a performance measurement system for the new TANF program. Although there is considerable activity in this area in both the public and private sector, performance measurement is a field in the early stages of development. Currently, no single, agreed-upon approach for measuring performance exists. In addition, in relation to measuring performance in the TANF program, we identified a number of difficult and inter-related questions and issues. We have listed many of the major issues below and invite comment on how we have addressed them in the proposed rule.

A. General Approach

What is the purpose of the bonus award? What outcomes should we be trying to influence through performance bonuses? Should we reward accomplishment (comparing one State with another) or improvement (comparing one State with its own previous record) or both? Does the bonus represent only a reward for State achievement or does it also represent an incentive to other States for improved performance? Should we focus on awards for innovation and creativity? Should the system reward only a few States or a larger number of States?

B. Short-term vs Long-term Strategies

Should we approach our task with the idea of developing interim measures for the short-term and working on more rigorous (e.g., more refined, sophisticated, or specific) measures over time as we learn more about the nature of State TANF programs, as better data become available, and as we get more experience with the high performance bonus award process itself? Should we award $200 million each year in bonuses or award less money in the initial years, rolling unused funds into increased awards in the out-years?

C. Formula and Distribution Issues

Should we develop a single, composite formula for awarding bonuses, or several formulae? Should the formula be designed to include several categories of performance? Should States be allowed to choose the categories in which they wish to compete? Should the formula include a pre-determined standard of performance with bonuses being awarded only if the State exceeds the standard? How can we avoid unintended effects or perverse consequences of a particular formula design? Should funds be divided equally among the measures? Since a State cannot receive a bonus greater than five percent of its Family Assistance Grant, how should funds be re-distributed if a State's award exceeds this amount? For what purposes may a State use bonus award funds?

D. Measures

What specific measures should we use? Should the measures address each of the goals in section 401 of the Act? If not, which goals should receive priority? Should we identify a broad set of measures or focus on a more limited set of key measures? Should we focus primarily on work-related measures—a major goal of TANF? Should individual measures be tied to the TANF population only or to the entire State population? Should the measures be quantifiable or should some measures be qualitative, e.g., patterned after the Baldridge Awards with a panel of judges selected from a mix of national organizations and looking at such criteria as leadership, collaboration, worker-client relationships, customer satisfaction? Should we propose a set of core measures against which all States would compete and a set of optional measures against which States could choose to compete? Should there be State-identified measures?

E. Data Sources

What data sources are available? How reliable, objective, and verifiable are they? What would be the administrative burden associated with alternative data sources? Will the data be comparable across States? What data may be expected to be available in the future? Should all data be verified before awards are made? What data validation parameters should be undertaken? Should we limit the measures to those that could be reasonably validated or collected from ''independent'' sources? Should we limit the measures to those for which all States have data or reasonable access to data?

IV. FYs 1999, 2000, and 2001 Bonus Awards

We would have preferred to set the formula for all years through rulemaking. However, FY 1998 (and FY 1997 in relation to improvement measures) was the first year in which State performance would be measured in order to make first year bonus awards in FY 1999. We were not able to conduct adequate consultations and complete a formal rulemaking process in order to advise States, in a timely way, how we would be assessing their performance in FY 1998 and FY 1999 in order to make awards in FY 1999 and FY 2000. Therefore, we decided to issue program guidance covering the first two performance years without the benefit of a formal rulemaking process.

We issued two Program Instructions covering bonus awards for FY 1999. Following the extensive external consultation noted above, and consideration of comments received on draft proposals, we issued a Program Instruction to States on March 17, 1998 (TANF–ACF–PI–98–1), specifying the allocation formula and performance measures we would use to make FY 1999 bonus awards.

The first Program Instruction grew out of our consultations with NGA, APHSA, NCSL, and State representatives. From February through July 1997, we scheduled bi-weekly discussions with these groups covering the principles underlying a performance system, the viability of individual measures and data options, and the general allocation and distribution rules. In July 1997, we shared a ''preliminary proposal'' with our State partners and other interested parties, including advocates and technical and policy experts, on which we received wide-ranging and very helpful comments.

Based on the comments we received and further consultations, we incorporated a number of changes to our initial proposal, and issued the March 1998 Program Instruction. We made a few additional technical changes and clarifications before issuing the

reporting form (ACF–200) on August 13, 1998 (TANF–ACF–PI–98–5, OMB No. 1970–0180).

We issued program guidance for the FY 2000 bonus awards on March 3, 1999 (TANF–ACF–PI–99–1).

We plan to issue guidance for the bonuses to be awarded in FY 2001 since final rules will not be published until well into the performance years for these awards. (Awards in FY 2001 will be based on information from States for FY 2000 and FY 1999 (improvement measure).)

V. Discussion of the Regulatory Provisions

A. Principles for a High Performance Bonus System

Given the substantive and technical complexities associated with the development of high performance bonus measures, NGA and APHSA developed a set of principles they believed should apply to a high performance bonus system. We believed that these principles offered a positive approach to and useful criteria for developing a bonus award system while avoiding major pitfalls. We also found these principles helpful as we addressed specific issues in developing the NPRM.

The NGA/APHSA principles stated that a high performance bonus system should:

- Be simple, credible, quantifiable, understandable to the public, and consistent with the goals of the law;
- Focus on outcomes rather than process;
- Take varying State economic circumstances and policies into account and not impede the flexibility provided to States under Public Law 104–193;
- Minimize double jeopardy or reward. (For example, the law already provides bonuses for reducing out-of-wedlock births, a caseload reduction credit, and penalties and incentives related to child support enforcement and paternity establishment);
- Avoid additional data collection requirements and costs and build on existing systems;
- Avoid unintended consequences;
- Focus on positive rather than negative measures; and
- Reflect the strong emphasis on employment and self-sufficiency in the Federal law and in the States' implementation of the law. This emphasis should influence the measures included in the system and the distribution of bonus funds.

B. Section-by-Section Discussion of the Proposed Rule

We believe the central goal of the TANF program is to move welfare recipients into work, and we are committed to specific work measures as a basis for awarding high performance bonuses. In addition, the law also works to ensure that the needs of low-income children and families are met. The Department has underway several studies to monitor changes in the situations of needy children and families after enactment of the TANF program, e.g., how certain children are affected by the provisions of the new law. The statute also requires us to track whether a State's child poverty rate increased as the result of the TANF program in the State and requires States to initiate corrective actions when such increases occur.

Bonus awards in FY 1999 and FY 2000 will be based solely on measures addressing the goal of work. However, the Department has been interested in developing a broader set of measures that more fully reflect other purposes and goals of the TANF program, as have the NGA, APHSA, NCSL, Congress, and others. We sought to develop measures that would address other purposes but, until recently, were unable to identify measures for which we had a reliable data source. In our consultations with States, Congress, national organizations, and experts, these groups have recommended the inclusion of other purposes and measures. Given the potential availability of a new data source, we are proposing both work and non-work measures in this NPRM to address three of the statutory purposes: work, child and family well-being, and family formation and family stability.

In summary, we are proposing to:

- Award bonuses beginning in FY 2002 based on four work measures (substantially the same work measures currently in use for FY 1999 and FY 2000 bonus awards);
- Award bonuses beginning in FY 2002 based on three non-work measures: one measure on family formation and family stability (increase in the number of children below 200 percent of poverty who reside in married couple families) and two measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program and participation in the Medicaid and the Children's Health Insurance Program (CHIP);
- Use one of two alternative sources of data for the four work measures; we are exploring the possibility of using information from the National Directory of New Hires as one of the data sources;
- Use data from the Census Bureau's decennial and annual demographic programs as the data source for two of the three non-work measures. *i.e.,* the measure on family formation and stability and the measure on participation in the Food Stamps Program; to measure performance on Medicaid/CHIP participation, States will match TANF data with data on Medicaid/CHIP enrollment;
- Award bonuses to the ten States with the highest scores in each measure;
- Specify an allocation of funds for each measure in FYs 2002 and FY 2003 (and beyond, if high performance bonus awards are subsequently authorized); we would award $140 million to the work measures and $60 million to the non-work measures:
- Create an annual review process, as needed, if future modifications and technical changes are necessary to these performance components; and
- Reiterate the requirement in § 265.3(d) of this chapter that, if a State wishes to receive a high performance bonus, it must file the information in Sections One and Three of the SSP-MOE Data Report.

We have taken this approach for several reasons. First, we continue to believe that, given the primary focus of the TANF program on work, we should reward States for their efforts in this area. Our funds allocation proposals also reflect the importance we place on measuring and rewarding State performance directed towards work. In addition, a potential new data source may be available (i.e., the National Directory of New Hires) that could serve as a research data source and would provide more comparable and reliable national data.

Second, as we noted earlier, we received strong encouragement in our external consultations to address the other purposes of the TANF program in addition to work. (The law explicitly ties the bonus to the four purposes in section 401(a) of the Act.) We believe States should be rewarded not only for their accomplishments in the area of work and self-sufficiency but also for their efforts in addressing other purposes, e.g., assisting needy families, promoting marriage, preventing and reducing the incidence of out-of-wedlock births, and encouraging two-parent families.

The non-work measures reflect our concern that the lives of children and families, particularly low-income children and families, should be a focus of attention in relation to the TANF program. We also believe that families are one of the strongest factors in developing and sustaining high levels of individual competence and functioning in our complex society. In addition, we believe that Medicaid and Food Stamps are critical supports for many working

families as they move towards self-sufficiency through employment. State performance to ensure that eligible families receive Food Stamps and Medicaid address two of the statutory goals of the TANF program: Providing assistance to needy families so that children may be cared for in their own homes and ending the dependence of needy parents on government benefits by promoting job preparation and work. Receipt of Medicaid and Food Stamps also helps make it possible for families to move off of welfare into employment and to progress on the job to eventual full independence.

We anticipate that national data may also be available to measure performance directed towards these goals, i.e., from the Census Bureau's decennial and annual demographic programs. We expect these data to be available in time to make bonus awards in FY 2002.

Finally, we have proposed an annual review process that reflects our concern that we have had very little experience with a high performance bonus system. We are aware that not all elements in the proposed bonus award process are fully established. We may need to make changes and adjustments after the final rule is published, and we believe we need to allow for an opportunity and mechanism to do this. We would use the review process, which might include consultations, as appropriate, a tool for making technical changes and issuing guidance, but not for changing the basic allocation of funds or adding new measures.

Our aim for future bonus awards is that they reflect the outcome goals of TANF, remain as simple as possible to understand and administer, and incorporate the best information available.

The preamble includes a section-by-section discussion of the NPRM and a discussion of other issues related to performance measurement including other measures and data sources that we considered but have not included in this NPRM. We welcome comment on our specific regulatory proposals, on the issues raised earlier in developing this NPRM, on the alternate measures and data sources we considered but did not include in our regulatory proposals, on provisions we may have overlooked, and on the policy options and questions we have raised throughout this preamble.

Following is a discussion of the regulatory provisions in this part, in the order of the regulatory text.

Section 270.1—What Does This Part Cover?

This section specifies the scope and content of part 270.

Section 270.2—What Definitions Apply to This Part?

In this section we are proposing definitions for terms used in this part. To the extent possible, we are proposing definitions that are consistent with those in other TANF rules.

We use the term ''Act'' to refer to the Social Security Act, as amended, e.g., by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the Balanced Budget Act of 1997, and any future amendments.

We are proposing a definition of ''bonus year'' to mean the year in which bonus funds are awarded and to clarify the fiscal years covered by this NPRM, i.e., FYs 2002 and 2003 and any subsequent fiscal year for which Congress authorizes and appropriates bonus funds.

This definition differs from the statutory definition in section 403(a)(4)(E)(i) of the Act in that the statute specifies that bonuses will be awarded in each of the fiscal years 1999 through 2003. There are two reasons for the difference. First, the NPRM does not address FYs 1999 through 2001 because, as discussed earlier, we decided to make awards in these years based on program guidance so that States would have advance notice of the measures that would be used. Second, we have proposed, as a part of this definition, to cover future bonus years should Congress authorize and appropriate bonus funds. This will allow us to continue to use the provisions of this part in making future bonus awards.

We have proposed a definition of ''comparison year'' to mean the fiscal year preceding the ''performance year,'' which we have also defined. We need this definition to clarify that, for two of the proposed work measures (the improvement measures), we are looking not only at data in the performance year, but also in the year that precedes the performance year, i.e., the ''comparison year.''

Because the terms ''bonus year'' and ''performance year'' are based on the fiscal year, we have included a definition of ''fiscal year'' for clarity.

We have proposed a definition of ''performance year'' to mean the fiscal year immediately preceding the ''bonus year.'' This clarifies that the year for which we will measure performance is the year preceding the year in which we will award the bonus as specified in section 403(a)(4)(D) of the Act. (As discussed earlier in the definition of ''comparison year,'' we will base performance for two work measures (the improvement measures) on the degree of improvement in performance between the performance year and the comparison year.)

We include a definition of ''separate State program'' and ''SSP-MOE Data Report'' for clarity regarding reporting of data. The first definition is taken from the final TANF rule published April 12, 1999 (64 FR 17720). The second definition is self-explanatory.

We propose a definition of ''State'' to mean each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa. This definition is consistent with the definition in section 419(a)(5) of the Act.

We have included a definition of the ''Food Stamp Program'' and have explained the following acronyms: ''CHIP'' is the Children's Health Insurance Program described in title XXI of the Social Security Act, ''HCFA'' is the Health Care Financing Administration, ''Medicaid'' is a State program of medical assistance operated in accordance with a State plan under title XIX of the Social Security Act, and ''MSIS'' is the Medicaid Statistical Information System. We also propose to use the acronym ''TANF'' for the Temporary Assistance for Needy Families program.

We use the term ''we'' throughout the regulatory text and preamble. The term ''we'' (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: The Assistant Secretary for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Section 270.3—What Is the Annual Maximum Amount We Will Award and the Maximum Amount That a State Can Receive Each Year?

In paragraph (a), we propose to award $200 million in bonus funds for each of fiscal years 2002 and 2003 and any subsequent years if Congress authorizes the continuation of the bonus awards and appropriates funds. Section 403(a)(4)(D)(ii)(I) of the Act states that ''the average annual total amount of grants to be made under this paragraph for each bonus year equals $200,000,000.'' We have interpreted this statement to mean that the actual amount of bonus funds awarded for

each bonus year could vary as long as a total of $1 billion was awarded over the five year period. However, after consultation with interested parties, we believe that we would foster the positive effects of the bonus by aiming to award $200,000,000 in each of these bonus years. We believe that a fixed, substantial award amount each bonus year provides States with a significant incentive that remains constant and promotes continuity of effort. Of course, the bonus amounts for fiscal years beyond FY 2003 will be determined based on any new authorizations and appropriations.

In paragraph (b) of this section, we specify that the amount payable to a State for a bonus year may not exceed five percent of the State's family assistance grant, as specified in section 403(a)(4)(B)(ii) of the Act. See the Appendix to this NPRM for a list of the potential maximum amounts that could be awarded to each State annually, based on the statutory limitation.

Section 270.4—On What Measures Will We Base the Bonus Awards?

In paragraph (a) of this section, we propose to base the high performance bonus awards on four work measures and three non-work measures.

These proposed provisions reflect the importance we place on work as a primary goal of TANF. They also reflect our concern that the lives of children and families in the State, particularly low-income children and families, should also be a focus of our attention in relation to the TANF program.

As discussed more fully below in § 270.6, States may select the work measures on which they wish to compete, and they will be ranked on these measures. Because we will be using Census Bureau data as the data source for the measure on family formation and family stability and the measure on participation in the Food Stamp Program, we will rank all eligible States on these measures. For the measure on participation in Medicaid/CHIP, we will obtain data from States based on matching records of individuals leaving TANF assistance with Medicaid/CHIP enrollment records. We will also rank all eligible States on this measure. We emphasize that, if a State wishes to be considered for a bonus in relation to any measure, it must submit the information in Sections One and Three of the SSP-MOE Data Report.

Work Measures

In paragraph (b), we propose that, beginning in FY 2002, we will measure State performance based on four work measures. States may compete on one, any number of, or none of these work measures. We will score and rank competing States and award bonuses to the ten States with the highest scores in each measure.

We are proposing these four measures because we believe that work measures most directly promote the purpose of TANF as stated in section 401 of the Act, i.e., ''increase the flexibility of States in operating a program designed to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage * * *.''

In addition, these work measures relate to three of the four statutory goals. While they relate most directly to goal two, (i.e., to ''end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage),'' they also address goal one indirectly, (i.e., to ''provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives'') as the provision of temporary cash assistance and other services leading to employment strengthens families and help keep them together. We also believe the work measures support the maintenance of families in goal four, (i.e., to ''encourage the formation and maintenance of two-parent families'') as a substantial body of evidence indicates that continued unemployment is associated with an increased incidence of marital break-up.

The four work measures are: Job Entry; Success in the Work Force (Job Retention and Earnings Gain); and improvement from the prior fiscal year in each of these measures.

We will use the proposed measures to measure State performance along three parameters of employment: the extent to which States are moving recipients into the work force, the degree to which recipients are able to remain in the work force, and the quality of the recipients' jobs. In different ways, all four measures reflect a State's success in moving families from welfare to work. Full success requires not only getting recipients into jobs, but also keeping them in jobs and increasing earnings in order to reduce dependency and enable families to support themselves over the long term. Our measures address all these aspects of success.

Overall, we believe these measures reflect the critical importance of and emphasis on work in the TANF program; are generally consistent with State data collection efforts; and reflect substantial agreement that, taken together, positive outcomes on these measures would be associated with achievement of employment-based self-sufficiency.

In paragraph (b)(3), we propose that States have the option to compete on one, any number of, or none of the work measures specified in this section. The opportunity to compete for one or more work measures furthers Congressional intent to support State flexibility in the design and operation of their TANF programs. We also know that States are in different stages of implementing the TANF program, have diverse programmatic emphases, and vary in their current levels of performance. We believe that offering States the option to choose from a list of work measures allows States that have different work philosophies to compete fairly for bonuses and compete in the areas of their highest achievement. Compared to a single measure, multiple measures are less likely to distort State policy decisions or to cause unintended consequences.

We discuss our proposal to award the bonus to the ten States with the highest scores in each measure in the preamble discussion of § 270.6.

Measures for Supporting Working Families

One of the key goals of welfare reform is to support and sustain working families. Food Stamps and Medicaid are potentially essential supports during the period when families are working but are not yet earning at the level that will enable them to achieve full self-sufficiency. The Administration and others have expressed concern at the falling levels of coverage in these programs. Therefore, we have implemented a variety of strategies to prompt States to reach working families who are eligible.

- *Food Stamps*

Like child care, the Earned Income Tax Credit, and Medicaid, receipt of food stamps is an important support for working families. Our colleagues at U.S. Department of Agriculture (USDA) are committed to working with States to ensure that eligible families obtain food stamps. Families with incomes up to 130 percent of the poverty line, or $17,748 for a family of three, can be eligible for food stamps. A typical family of three with a full time worker earning the minimum wage can get $220 a month in food stamps.

In recent years, States have taken remarkable action to revolutionize the welfare system. A strong economy combined with innovative State policies and an unyielding commitment to helping families become self-sufficient as they move from welfare to work has

resulted in a dramatic decline in the number of families receiving cash assistance. Many more individuals are now working to support themselves and their families than ever before. Critical to their continued success, however, is their ability to feed their families adequately. Food stamps can help parents working full-time at minimum wage who are taking advantage of the maximum Earned Income Tax Credit to escape poverty. In some cases, these individuals may only be able to keep their jobs and feed their families because food stamps help make ends meet.

Participation in the Food Stamp Program, however, has decreased dramatically in recent years. Since March 1996, participation has fallen by over 7 million people. One group for which participation is especially low is the working poor; only 39 percent of individuals with earnings who are eligible for food stamps benefits participate in the Food Stamp Program, compared to a participation rate of 71 percent overall.

Food stamps can make the difference between living in poverty and moving beyond it. It is imperative to the success of welfare reform, and more fundamentally to the well-being of all Americans, that States devote attention to making sure that needed supportive services, in particular food stamps, are available to those families that have left welfare but remain poor.

The President recently announced a series of actions to help ensure working families access to food stamps, including: (1) Allowing States to make it easier for working families to own a car and still be eligible for food stamps; (2) simplifying food stamp reporting rules to reduce bureaucracy and encourage work; and (3) launching a nationwide public education campaign and a toll-free hotline to help working families know whether they're eligible for food stamps.

As part of this effort, USDA has published ''The Nutrition Safety Net at Work for Families: A Primer for Enhancing the Nutrition Safety Net for Workers and Their Children,'' a companion piece to the DHHS Medicaid guide discussed below. This Food Stamps guide will assist State, local and community leaders in understanding Food Stamp Program access requirements. It also includes the following best practices for serving working families already implemented in some communities.

1. The State agency can take steps to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the Food Stamp Program. For example, States could:

- Submit a Program Information Plan to the Food and Nutrition Service, as specified at Section 11(e) of the Food Stamp Act of 1977.
- Implement a toll-free telephone number for application and enrollment information.
- Place billboards and posters in places frequented by low-income families.
- Provide flyers or brochures to community organizations that work with low-income households.
- Produce public service announcements for radio and television.
- Develop partnerships with private sector entities such as retail grocers to display or distribute materials.

2. The State agency can take steps to simplify the Food Stamp application and recertification process for working families. For example, States could:

- Shorten application forms.
- Use joint Food Stamp-TANF-Medicaid applications.
- Increase the availability of application sites.
- Place Food Stamp workers in the community (hospitals, health centers, schools or one-stop centers) and in TANF sites for States where programs are administered separately.
- Adopt flexible, family-friendly hours so parents do not have to miss work for eligibility and redetermination interviews.
- Clarify inconsistencies by telephone or mail.
- Conduct staff training on the three programs.
- Encourage Food Stamp applications even if the TANF application halts.

3. The State agency can take advantage of the option to extend categorical eligibility to participants in programs that receive the majority of their funding from sources other than TANF.

4. The State agency can adopt income reporting waivers to ease the reporting burdens of working families. States may request to:

- Implement a quarterly reporting system for households with earnings, and allow quarterly reporting of unearned income for such households.
- Allow for 6-month recertifications.
- Increase the reporting threshold from $25 to $100.

5. The State agency can take steps to educate families receiving Food Stamps about possible continuous eligibility, regardless of discontinued TANF receipt. For example, States could:

- Advise families to report earnings instead of simply calling to have their case closed or not going through the redetermination process.
- Review closed TANF cases in which Food Stamps was not continued, and inform families with cases closed in error of their entitlement to restore benefits.

We believe States who use these best practices are likely to increase enrollment of eligible families, and therefore, to perform better on the outcome measure below. Along with encouraging and assisting States in using these best practice innovations to help ensure working families access to food stamps, USDA is also committed to vigorous enforcement of the food stamp law and will investigate complaints about State and local practices and pursue administrative and legal action as required.

- *Medicaid/CHIP*

Medicaid enrollment dropped by about 1 million from 1996 to 1997. Though there are many potential reasons for the decline, we do not have any definitive answers about why it has occurred. Improvements in earnings and employment resulting from the strong national economy have probably played an important role in this decline, making it possible for some low-income Medicaid families to find jobs that offer health insurance. It is also important to note that, while Medicaid enrollment has declined, the number of people under the poverty level who are uninsured has not increased in the last few years. Changes in attitudes toward public assistance may also be playing a role in falling TANF, Food Stamp, and Medicaid caseloads.

To help States navigate the opportunities and challenges inherent in providing Medicaid to all eligible families, DHHS developed and issued ''Supporting Families in Transition; A Guide to Expanding Health Coverage in the Post-Welfare Reform World.'' This publication was sent to all State Medicaid Directors and other interested parties. We have a follow-up strategy that includes an educational component, aggressive outreach, and a proactive enforcement process. We are also undertaking research activities to promote increased participation of eligible individuals in these programs.

It is in this context that we are proposing performance measures related to Food Stamps and the Medicaid/CHIP programs that will reward State efforts to support work, self-sufficiency, and the well-being of low-income eligible families through rewarding States for year to year improvements. We believe that basing high performance bonus awards on these measures will provide another valuable strategy in the Administrations's efforts to advance the

goals of welfare reform, focus attention on these critical supports, assist working families, improve outcomes for children, and encourage States to take action to increase the likelihood that low-income families not receiving cash assistance will participate.

We have taken a similar approach in developing these two measures. Each is designed as an improvement measure; each measure will receive $20 million in bonus funds. In addition, the food stamp and the Medicaid/CHIP measures are also similar in that we have proposed ''qualifying conditions'' in each measure. These conditions are ones a State must meet in order to be eligible to compete for the bonus. For both Food Stamps and Medicaid/CHIP, these conditions include requirements of law and regulation that States must meet. For Medicaid/CHIP, these conditions also include a number of options a State must take to maximize participation of those eligible for Medicaid and CHIP.

This difference in the design of the food stamp and the Medicaid/CHIP qualifying conditions reflects the nature of the two programs. The Medicaid law and regulations provide States considerable flexibility and makes a broad set of such programmatic options available to States. In contrast, the Food Stamp Program offers very little State option or flexibility in these areas because it has national standards of eligibility with many key service requirements mandated by statute. However, we invite comments on whether the decision to include qualifying conditions is appropriate, as well as whether the specific conditions and distinctions made between the programs are valid.

A. Measure of Participation by Low-Income Working Families in the Food Stamp Program

In paragraph (c)(1), we identify certain qualifying conditions, i.e., practices that a State must be in compliance with in order to compete for a high performance bonus related to food stamp participation:

(i) The State agency has issued policy instructions or regulations clearly specifying that, at first contact with the State agency which administers the Food Stamp Program, individuals must be informed of the opportunity to apply for food stamps in accordance with 7 CFR 273.2(c)(1).

(ii) The State agency has issued policy instructions or regulations clearly specifying that food stamp application forms are to be readily accessible and available upon request, in accordance with 7 CFR 273.2(c)(3).

(iii) As evidenced through policy instructions, regulations, and administrative reviews, the State agency is complying with application processing time frames and expedited service rules, as required by 7 CFR 273.2(g).

(iv) As evidenced through policy instructions, regulations, and administrative reviews, the State agency has taken steps to prevent inappropriate denials and terminations of eligible food stamp participants who have lost TANF eligibility, in accordance with 7 CFR 273.12(f). Since food stamp eligibility is not based on TANF eligibility, States may not deny food stamp eligibility to a family or family member simply because the family is ineligible for TANF.

These required qualifying conditions reflect food stamp policies that are required by statute or regulation. We do not believe that a State which is out of compliance with these requirements should be eligible for a bonus. The Food and Nutrition Service of the U.S. Department of Agriculture will determine whether a State is meeting these conditions through its ongoing oversight of the Food Stamp Program.

In paragraph (c)(2), we are proposing the outcome measure on which the bonus will be based. Beginning in FY 2002, we will measure the improvement in the number of low-income working families (i.e., families with children under the age of 18 who have an income of less than 130 percent of poverty and earnings equal to at least half-time, full-year employment at minimum wage) receiving food stamps as a percentage of the number of low-income families working in the State, using the same definition. For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of CY 2000 to CY 2001, based on Census Bureau data. We will rank all States and will award bonuses to the 10 States with the greatest percentage improvement in this measure.

We are proposing this outcome measure in order to reward States that have identified and implemented successful strategies to provide food stamps to eligible, low-income working families.

B. Measure of Participation of Low-Income Families in the Medicaid and CHIP Programs

In paragraph (d)(1), we identify certain qualifying conditions that a State must meet in order to compete for a high performance bonus related to the Medicaid and CHIP programs, based on requirements in Medicaid law and regulation; in paragraph (d)(2), we propose that the State must document that it has adopted at least two of a list of seven State options, (i.e., programmatic policies or practices that are designed to facilitate Medicaid and CHIP enrollment and the retention of eligible children and families.) In paragraph (d)(3), we propose the specific outcome measure on which the bonus would be awarded.

We propose the following qualifying conditions in paragraph (d)(1):

(1) The State has issued policy instructions or regulations clearly specifying that, at first contact with the TANF agency (when the TANF agency is also the Medicaid agency), an individual must be given the opportunity to apply for Medicaid in accordance with 42 CFR 435.906;

(2) When eligibility under section 1931 of the Act is lost due to hours of, or earnings from, employment or loss of time-limited earning disregards, the State issues to the affected family a written notice that meets the requirements of section 1925(a)(2)(A) of the Act and a card or other evidence of the family's entitlement to assistance as required under section 1925(a)(2)(B) of the Act;

(3) The State has issued policy instructions or regulations clearly specifying that family members may not be terminated from Medicaid until it has been determined that they are not eligible under any other Medicaid group; and

(4) The State has fulfilled all data requirements under the law, including being up to date on all Medicaid and CHIP data submissions, and having the MSIS on-line and operating properly.

All of these programmatic criteria reflect State policy actions and processes that are mandated by Medicaid statute or regulation, and we do not believe that a State that is out of compliance with these requirements should be eligible for a bonus related to Medicaid and CHIP participation. We propose that, to be eligible for the bonus, States must fulfill these required conditions. HCFA will verify States' compliance through State documentation and the agency's ongoing oversight of the Medicaid/CHIP programs.

In addition to complying with these qualifying conditions, we propose that applicant States must meet at least two qualifying State options. These are programmatic options that are designed to maximize participation by those eligible for Medicaid and CHIP. We propose that a State that adopts at least two of the qualifying options below (in

addition to satisfying the required qualifying conditions described above) would be eligible to compete for the high performance bonus related to Medicaid and CHIP, based on the outcome measure in paragraph (d)(3). We propose that States provide documentation demonstrating that they have adopted two or more of these optional measures. HCFA will verify compliance through the agency's ongoing review of the Medicaid/CHIP programs. We believe States that exercise these options are likely to increase enrollment of eligible families, and therefore, to perform better on the outcome measure in paragraph (d)(3) as discussed below.

Programmatic Options:

(1) The State accepts mail-in or phone-in applications for Medicaid for families and children, which can be completed without a face-to-face interview;

(2) State Medicaid workers have been outstationed at locations in addition to the locations required under 42 CFR 435.904 (c)(1) and (c)(2);

(3) The State has expanded Medicaid eligibility for recipient and applicant families through the use of less restrictive methodologies, authorized by section 1931(b)(2) (B) and (C) of the Act;

(4) The State uses a definition of ''unemployed parent'' that includes parents who are employed more than 100 hours per month, as authorized under 45 CFR 233.101 and section 1931(d) of the Act;

(5) The State provides continuous Medicaid eligibility for children for a period of time without regard to changes in circumstances, as authorized by section 1902(e)(12) of the Act;

(6) The State provides a period of presumptive Medicaid eligibility for children, as authorized by section 1920A of the Act; or

(7) The State has simplified the enrollment and re-enrollment processes for children and low-income families by implementing such improvements as shortened application forms.

Once the States are identified as eligible for consideration, based on the qualifying conditions and options in paragraphs (d)(1) and (d)(2), we propose a specific outcome measure for determining which States would receive a bonus. The outcome measure we are proposing in paragraph (d)(3) would assess Medicaid and CHIP participation among persons leaving TANF assistance. The population whose Medicaid/CHIP participation would be measured is those individuals whose TANF assistance cases were closed in the calendar year who also were enrolled in Medicaid or CHIP at the time of case closure. The measure of State performance would be the percentage of such individuals who are enrolled in Medicaid or CHIP six months after leaving TANF (and who are not currently receiving TANF assistance in that month).

We chose this approach because nearly all individuals leaving TANF are likely to be eligible for a minimum of six months of transitional Medicaid under section 1925 or to qualify for Medicaid under other eligibility groups (e.g., section 1931, poverty-related children) or to be eligible for CHIP. Continued health insurance coverage is a critical support to families making the transition from welfare to self-sufficiency, and we expect States to achieve a high rate of Medicaid and CHIP participation among this population in order to be considered high performers. We propose that bonuses would be awarded to the ten States with the largest percentage improvement in their Medicaid/CHIP participation rates.

The data for this measure will be submitted quarterly by States at an aggregate level for purposes of this evaluation. States will obtain these data by matching records of individuals leaving TANF assistance with Medicaid/CHIP enrollment data.

We also considered an outcome measure that would capture State performance in enrolling and retaining all eligible families and children in Medicaid and CHIP, regardless of their former or current welfare status. This measure would reward States for the Medicaid and CHIP participation of those families and children leaving TANF assistance, and also for the participation of eligible families and children who may not participate in, be diverted from, or may not have any contact with, the TANF program.

In operational terms, this measure would be based on data from the Census Bureau, supplemented with data from State MSIS data and HCFA Form 21–E.

After careful consideration, we proposed an outcome measure limited to individuals leaving TANF assistance because we believe that it better captures the mission and responsibility of the TANF agency to move families toward self-sufficiency. While the broader population measure would reflect a critical goal of expanding health coverage and also encourage States to enroll eligible individuals who are diverted from TANF assistance, the proposed measure is more directly related to the goals and purposes of TANF. We invite comments on this matter.

Measure of Family Formation and Stability

In paragraph (e), we propose that, beginning in FY 2002, we will measure the percentage increase in all children below 200 percent of poverty who reside in married couple families, based on a comparison of data between CY 2000 and CY 2001 from the Census Bureau. For any given subsequent year, we will compare a State's performance on this measure to its performance in the previous year. We will rank all States and award bonuses to the ten States with the greatest percentage increase in this measure, if they have filed the information in Sections One and Three of the SSP–MOE Data Report. Like the Food Stamps and Medicaid/CHIP measures, a total of $20 million will be awarded for this improvement measure.

We are proposing this measure of family formation and family stability for several reasons: the law's emphasis on promoting marriage and encouraging the formation and maintenance of two-parent families (section 401(a) of the Act); our concern for the well-being of children and families, particularly low-income families; and our interest in stimulating successful State initiatives in this area. The number of parents living with a child is generally tied to the amount and quality of human and economic resources available to that child. Children who live in a household with one parent are five times more likely to have family incomes below the poverty line than are children who grow up in a household with two parents.

We also know that children who live with only one parent suffer more emotional, behavioral, and intellectual problems. They are at greater risk of dropping out of school, alcohol and drug use, adolescent pregnancy and childbearing, juvenile delinquency, mental illness, and suicide.

Using this measure would entail no new data collection responsibilities on the part of States, assuming the Census Bureau data are available.

Consideration of Other Measures

During the course of our consultations and internal discussions, we considered and evaluated a wide range of possible measures and data sources. We also tried to keep in mind the principles for a high performance bonus system developed by NGA and APHSA; sought to avoid additional data collection requirements and costs and to build on existing systems; tried to focus on positive rather than negative measures; and attempted to avoid unintended consequences. Specifically, we

considered a number of other measures related to the non-work purposes in the law. These included:

- *Child support:* The average monthly number of TANF families that have both earned income and child support paid within the same month.
- *Diversion:* The number of applicants with a financial payment diverted from the TANF cash assistance program divided by the number of newly approved cash assistance cases.
- *Out-of-wedlock births:* Measures of such births to TANF recipients, to all persons in the State as a whole, or in relation to the same standards and provisions as defined in the bonus to reward decrease in illegitimacy ratios (section 403(a)(2) of the Act).
- *Child poverty:* The reduction in the State's rate of child poverty for all families with children under age 18 and the reduction in the rate of child poverty for working families with children under age 18, i.e., families with earnings equivalent to half-time full year employment (parallel to the food stamp measure).

(See the following preamble section entitled ''Discussion of Other Issues Related to Performance Measurement'' in which we address other measures and data sources we also considered.)

For several reasons, we did not include a number of potential measures where there were other mechanisms in the statute for addressing them. First, we were concerned that inclusion of too many measures would spread the bonus funds too thinly and thereby weaken their ability to provide incentives to States to achieve the goals and purposes of TANF. Second, we believed the measures duplicated other measures for which performance funding is already in place, e.g., out-of-wedlock birth reduction and child support enforcement, or where there are other mechanisms to monitor and correct State performance (child poverty). Finally, we were particularly aware of the issue of diversity among States and how that diversity might impact the design and implementation of the high performance bonus award system. There was general agreement that the uneven resources and multiple differences in economic and demographic circumstances and program and caseload characteristics among States were serious complicating factors in designing a high performance bonus system. For example, a State with a stronger economy, a less disadvantaged caseload, or lower grant levels may be more successful in moving recipients into jobs and off welfare than the State with a weak economy, a more disadvantaged caseload, or a higher grant level. Also, a State which began moving recipients into jobs several years before TANF was enacted and high performance was measured may have difficulty showing the same level of accomplishment in current years.

However, we would like to discuss our consideration of a child poverty measure in greater detail because it relates to two of the goals/purposes of TANF: promoting work and employment and strengthening child and family well-being by assisting needy children in their own homes or in the homes of relatives.

Several innovative States are already using child poverty as a measure of their efforts, and some States are using the resources and flexibility under TANF to address this issue. AFDC was limited in its ability to address child poverty in that the primary flexibility States had was in setting benefit levels. In contrast, the TANF program offers States the opportunity to utilize a wide range of investments to help families escape poverty while strengthening their commitment to work. These investments include:

- Increasing the stability of work through investments in the wages parents earn or the hours they work, such as employer partnerships that focus on the first job, on job advancement after the first job, or on combinations of work and training; mentoring and case management strategies; strategies that combine work, education, and training; and supported work for families with barriers to private sector employment;
- Utilizing well-known strategies to supplement work, such as more generous earning disregards, earnings supplements, and wage subsidies;
- Improving child support, such as increasing the amount of support collected from non-custodial parents that is passed through to children;
- Helping families during periods between jobs, such as quick re-employment services; and
- Providing employment assistance for other families, such as a child-only family where a caretaker relative is not receiving assistance.

In addition, there is empirical evidence from rigorous evaluations that several of these strategies can be effective in reducing poverty. For example, interim findings from the Minnesota Family Investment Program, which implemented generous earning disregards, nearly doubled the percentage of families above poverty; and a strongly employment-focused welfare-to-work program in Portland, Oregon, which stressed getting recipients higher paying jobs along with higher quality, reliable child care, increased the number of families with above poverty income by nearly one quarter.

We encourage States to use the available flexibility and resources to pursue strategies that support working families and help move them out of poverty. However, after a full consideration of all factors, we chose not to include a child poverty measure in the proposed rule for the following reasons:

- A child poverty measure was duplicative of the requirements in section 413(i) of the Act for States to report on their child poverty rates and take corrective action where any increase in child poverty of five percent or more is attributable to the TANF program in the State; and
- Improvements in the proportion of families receiving food stamps and increases in employment and earnings both raise family income and thereby contribute to poverty reduction.
- Since the official poverty measure does not reflect income sources such as food stamps or EITC, it may not accurately reward State strategies to support working families.

In developing the NPRM, we also considered additional measures and various data sources, including the Current Population Survey (CPS), other Census Bureau surveys, the National Center on Health Statistics, Unemployment Insurance data, and State administrative data. Except for the Census Bureau's decennial and annual demographic programs, we identified problems with each of these measures and with the data sources considered, e.g., lack of State-reliable and comparable data; data collection burden; and, in some cases, lack of consistent definitions for the measure across the States. In other cases, we believed the measures duplicated other measures for which performance funding is already in place, e.g., out-of-wedlock birth reduction and child support enforcement.

For additional discussion of other issues related to performance measurement, including absolute performance, performance improvement, and other measures and data sources considered, please see the following preamble section entitled, ''Discussion of Other Issues Related to Performance Measurement.''

We are committed to work measures as a major component of the bonus award. However, we invite comment about whether we should make changes in these work measures and whether we should consider different options. We raise the following questions on the

work and non-work measures for public consideration:

1. Are the work measures proposed in § 270.4 the work measures we should be using?

2. Are there other measures and data sources we should consider?

3. Does the definition of ''assistance'' included in the final TANF rule affect the data captured in the work measures?

4. Should we consider other measures that address the first purpose of the TANF program, i.e., to assist needy families?

5. What data sources should we consider for the non-work measures if the Census Bureau data are not available for bonus awards in FY 2002?

6. Should we consider measures that would be duplicative or similar to measures used with other performance awards, e.g, a measure of out-of-wedlock births?

7. Should we consider State enforcement of the TANF non-displacement requirements in awarding bonuses and, if so, how?

Section 270.5 What factors will we use to determine a State's score on the work measures?

In this section, we propose the specific definitions for each of the work measures and an explanation of how we will calculate the percentage rate for the work measures, both for the absolute measures and for the improvement measures, and rank State performance.

In paragraph (a), we propose the specific definitions for each of the work measures as follows:

The *Job Entry Rate* means the unduplicated number of adult recipients who entered not fully subsidized employment for the first time in the performance year (job entries) as a percent of the total unduplicated number of adult recipients unemployed at some point in the performance year. Adult recipients in fully subsidized employment are not included in the numerator but are included in the denominator.

We are proposing an unduplicated count of adult recipients because we believe that allowing one individual to be counted more than once in the numerator would unfairly inflate a State's performance. We are proposing not to include in the numerator recipients in fully subsidized employment because that would mitigate against self-sufficiency. However, we are proposing to include them in the denominator because we believe they should be considered as part of the pool of unemployed recipients who potentially could be placed in unsubsidized employment and, thus, could be an incentive to the State to help these recipients obtain a job that is not fully subsidized.

The *Success in the Work Force Rate* measure is composed of two submeasures defined as follows:

- The *Job Retention Rate* means the performance year sum of the unduplicated number of employed adult recipients in each quarter one through four who were also employed in the first and second subsequent quarters, as a percent of the sum of the unduplicated number of employed adult recipients in each quarter. (At some point, the adult might become a former recipient.) Adult recipients in fully subsidized employment are not included in either the numerator or the denominator; and
- The *Earnings Gain Rate* means the performance year sum of the gain in earnings between the initial and second subsequent quarter in each of quarters one through four for adult recipients employed in both these quarters as a percent of the sum of their initial earnings in each of quarters one through four. (At some point, the adult might become a former recipient.) Earnings gains of adult recipients in fully subsidized employment are not included in either the numerator or the denominator.

We believe these two submeasures are the two most important components for determining success in the workplace. We are proposing to give job retention a weight of two compared to one for earnings gain. We believe that earnings gain is dependent on job retention and, therefore, should be given a lesser weight.

We are proposing that job retention be measured in the initial quarter and the two consecutive subsequent quarters, because this is consistent with related measures of job retention in the Job Training Partnership Act, Welfare-to-Work, and Work Investment Act programs.

We propose to measure earnings gain from the initial quarter to the second subsequent quarter because we believe it is more reasonable to expect earnings gain at a later rather than earlier date. We considered measuring a longer period for success in the workplace and welcome comments from the public on whether we should measure job retention or earnings over a longer period of time.

The *Increase in the Job Entry Rate* means the positive difference between the performance year job entry rate and the comparison year job entry rate as a percent of the comparison year job entry rate.

The *Increase in Success in the Work Force Rate* means the positive difference between the performance year success in the work force rate and the comparison year success in the work force rate as a percent of the comparison year success in the work force rate. It is composed of two submeasures defined as follows:

- The *Increase in the Job Retention Rate* means the positive difference between the performance year job retention rate and the comparison year job retention rate as a percent of the comparison year job retention rate; and
- The *Increase in the Earning Gain Rate* means the positive difference between the performance year earnings gain rate and the comparison year earnings gain rate as a percent of the comparison year earnings gain rate.

We are proposing that increase in the job entry rate and success in the work force be measured in the simplest and most straightforward way, i.e., a percentage increase from the comparison year to the performance year. However, we welcome comments on alternative ways of measuring improvement.

We believe these measures are the best measures of self-sufficiency, are measures based on readily available data, and are measures that will not create a heavy administrative burden on States.

In addition, these measures are consistent with both past and current legislation designed to measure performance in the work area. Section 106(a)(2) of the Job Training Partnership Act (JTPA) stated that ''the basic return on the investment is to be measured by long-term economic self-sufficiency, increased employment and earnings, reductions in welfare dependency, and increased educational attainment and occupational skills.'' Section 106(b)(3) of JTPA listed several factors on which to base performance standards including: (A) Placement in unsubsidized employment; (B) retention for not less than 6 months in unsubsidized employment; and (C) any increase in earnings, including hourly wages.

Recent legislation, the Workforce Investment Act of 1998, authorizes a performance accountability system. Section 136 of this legislation specifies State performance measures including entry into unsubsidized employment, retention (in unsubsidized employment) six months after entry into unsubsidized employment, and earnings received (in unsubsidized employment) six months after entry into unsubsidized employment.

Another law enacted by Congress, the Balanced Budget Act of 1997, authorized Welfare-to-Work Grants to

States and local communities to provide transitional employment assistance that moves hard-to-employ welfare recipients and certain non-custodial parents into unsubsidized employment and economic self-sufficiency. The legislation authorizes the Department of Labor to award performance bonuses. Section 5001(a)(5)(E)(iii) of this legislation specifies that the formula for measuring State performance be based on certain factors including ''(I) the success of States in placing individuals in private sector employment or in any kind of employment * * * (II) the duration of such placements; (III) any increase in earnings of such individuals * * * and such other factors as the Secretary of Labor deems appropriate * * *'' The formula may also take into account general economic conditions on a State by State basis.

Finally, the work measures we have proposed are similar to those developed by the Department of Labor for the Welfare-to-Work performance bonus. See Notice of Welfare-to-Work performance bonus criteria, published November 23, 1998 (63 FR 64832).

In paragraph (b)(1), we propose to measure performance over the course of an entire fiscal year as specified in section 403(a)(4)(B) of the Act. We believe that measuring performance over an entire fiscal year (or fiscal years, in the case of improvement measures) will help ensure that a State's performance score is not unfairly deflated or inflated because of seasonal or other fluctuations in employment patterns.

In paragraph (b)(2), we explain that we will rank competing States on the measures for which they indicate they wish to compete and for which they submit the data specified in § 270.6 within the timeframes specified in § 270.11.

In paragraph (b)(3), we propose to rank States on their absolute performance (for the measures in paragraphs (a)(1) and (a)(2) of this section) and on their performance improvement from the previous fiscal year (on the measures in paragraphs (a)(3) and (a)(4) of this section). We believe that awarding bonuses for both absolute and improved performance provides a way to ensure a more objective and fair competition, i.e., States starting from a lower baseline would have a reasonable chance of competing for the bonus awards.

In addition, improvement measures serve as an added incentive to States to compete and excel. While it is conceivable that a State scoring high on an improvement measure might score very low on an absolute measure, we, nevertheless, believe that a State which is a high performer relative to its past performance should be rewarded accordingly. The overall benefit to the TANF recipients served and the contribution to the success of the overall TANF program outweigh any concerns that absolute and improvement scores might appear inconsistent to some observers. We have included a discussion of alternate ways to structure the high performance bonus award system and questions for public comment on the issue of an objective and fair competition in the subsequent preamble section.

Paragraph (b)(3) also proposes that the scoring of the two measures (success in the work force rate and increase in success in the work force rate) will be a composite weighted score of the rank of the retention and earnings gain measures with the job retention rank having a weight of ''2.'' We believe earnings gain is dependent on job retention, and job retention is the more familiar measure with a more substantial history.

In paragraph (b)(4), we propose how we will rank the States on the four work measures. Each State will be ranked from high to low with ''1'' being the rank for the State with the highest score. We will assign a rank to each State not competing or submitting data for a measure which is the number following the last rank for States that properly submitted data for that measure on a timely basis and notified us of their interest in competing.

In paragraph (b)(5), we propose that, if we identify more than ten States due to a tie in score for a measure, we will calculate the rate to as many decimal points as necessary to eliminate the tie. Since we are proposing that no more than ten States can receive a bonus award for each measure, we believe that this calculation is the fairest and least controversial procedure.

For clarity, we propose in paragraph (c) a definition of *Improvement Rate* to mean the positive percentage change between the performance year and the comparison year for each measured rate (job entry, retention, earnings gain).

We have included additional discussion on absolute performance, performance improvement, and other issues relating to performance measurement in the subsequent preamble section.

We also raise the following questions for public consideration:

1. Should we allow States to select the measures on which they wish to compete?

2. Should we require all States to compete on certain ''core'' or ''mandatory'' measures as a condition of receiving a bonus?

3. If we require ''core'' measures, should we allow States to compete on other measures at their option?

4. Should we base some measures on absolute performance and others on performance improvement as proposed in this part?

5. Should we consider a longer employment period as the retention rate in future years, e.g., one year, 18 months?

6. Should the definitions and/or specifications for these work measures be modified, e.g., to include fully subsidized work, minimum hours of earnings? (See also § 270.6 for a discussion of the data that must be reported.)

Section 270.6 What Data for the Work Measures Must the State Report to Us?

We have not included the option to submit sample data under these proposed rules. Sampling adds a significant level of complexity and raises data precision questions without significant cost savings.

In paragraph (a), we propose that, if a State wishes to compete on any or all of the work measures in § 270.5(a), it must report one of two alternative sets of data, as specified by the Secretary, either:

(1) An unduplicated list of all adult recipients by name, social security number, and date of birth for each quarter of the semi-annual reporting period; adult recipients in fully subsidized employment must be included in the list but identified separately; or

(2) Certain information based on a match between the State's adult recipient identification data and the Unemployment Insurance (UI) employment data, also for each quarter of the semi-annual reporting period. Adult recipients in fully subsidized employment must be excluded from this data match but must be included in the count of unemployed recipients.

We are proposing these two different sets of data for several reasons. First, we wish to obtain public comment on the content and desirability of each alternative. Second, in relation to the first alternative, we are exploring the possibility of using the National Directory of New Hires (NDNH) on an ongoing basis. We would match the recipient identifying information in paragraph (a)(1), with the data in the NDNH to determine the State's scores for the work measures.

The NDNH is one of two databases managed by the Federal Parent Locator Service (FPLS) in the Office of Child

Support Enforcement, ACF. The FPLS is a computerized network, established pursuant to section 453 of the Act, through which States may request and receive information to find noncustodial parents and/or their employers for purposes of establishing paternity and securing support. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required the Secretary to develop an expanded FPLS to improve States' ability to locate child support obligors, establish and enforce child support orders, and for other specified purposes in the Act.

The expanded FPLS includes the NDNH, which was implemented on October 1, 1997, and a Federal Case Registry. The purpose of the NDNH is to develop a repository of information on newly-hired employees and on the earnings and unemployment compensation claims data of employees to enable States to quickly locate information on the address of, employment of, and unemployment compensation being paid to, parents with child support obligations who are residing or working in other States.

This data reporting alternative would be our preference for several different reasons. We would envision using the State data in paragraph (a)(1) along with the NDNH data not only for purposes of determining eligibility for high performance bonus awards, but, more importantly, for research purposes. We believe these data will provide an unparalleled source of objective, national, and comparable data on the TANF program. We would be able to gain insight into such areas as national trends in job entry, employment retention and earnings, and the impact of State policy choices on employment outcomes. Additional research might provide information on the relationships between outcome levels (low employment, retention, and earnings gain) and economic conditions; the effects on employment and earnings when individuals reside in one geographic area and work in another; and the extent to which welfare recipients enter employment that is not covered by the UI system, such as Federal government employment.

The NDNH also has the most comprehensive data on both Federal and State employment. As such, it would allow tracking of employment across State lines as well as identifying Federal government employment, something the UI system does not allow. We estimate that the NDNH would provide us with at least 90 percent of the job entries for TANF and former TANF recipients. It would also give us a single data source against which State performance would be measured. Bonus awards would not be dependent on the States' ability to obtain the information and would allow us more easily to measure performance and success as well as reduce the burden on States. Also, having specific recipient identifying information would permit the use of the data for a variety of additional research purposes.

Since the availability of the NDNH data has not yet been determined, we are proposing an alternative data source in paragraph (a)(2), i.e., a State would submit data based on matches of its adult recipient data with its Unemployment Insurance (UI) employment data. This information would be submitted as follows to facilitate the calculation of the scores for each work measure:

(i) The cumulative number of unduplicated adult recipients who, by the end of the quarter, were unemployed recipients at some point during the performance year. (Adult recipients in fully subsidized employment are considered unemployed and should be included in this count. This includes employed recipients, who in the same quarter, became unemployed and then entered new employment for the first time in the performance year.);

(ii) The total number of unduplicated adult recipients employed at any time during the quarter;

(iii) The total number of employed adult recipients in paragraph (a)(2)(ii) of this section who, as a recipient in each quarter, entered employment for the first time this performance year. (This includes employed recipients, who in the same quarter, became unemployed and then entered new employment for the first time in the performance year.);

(iv) The total number of employed adult recipients in paragraph (a)(2)(ii) of this section who were also employed in the following quarter;

(v) The total number of adult recipients in paragraph (a)(2)(ii) of this section who were also employed in the second following quarter;

(vi) The total amount of earnings in the quarter of all employed adult recipients in paragraph (a)(2)(v) of this section; and

(vii) The total amount of earnings in the second following quarter of all employed adult recipients in paragraph (a)(2)(v) of this section.

We understand that some States might prefer this second alternate way of reporting data for various reasons, such as having an established working relationship with the UI agency, or because they do not want to submit the necessary identifying information on recipients for a match with the NDNH. However, we note that these data are already required by the TANF final rule. On the other hand, the State UI database has the same limitations as the NDNH database, plus it lacks information on Federal and out-of-State employment. Employment data for individuals living in one State and working in another are generally not available unless a special data matching agreement has been implemented.

Nevertheless, some States may have developed procedures for overcoming these obstacles. In addition to comments on the use of these proposed data sources, we also invite comment on any other data sources for the work measures we might have overlooked or rejected. See the subsequent preamble section for additional discussion of data sources we considered but did not propose to use.

You will note that, in paragraph (a)(1), we are proposing that when States report information on all adult recipients (TANF and SSP-MOE recipients), they must identify in their report to us those recipients in fully subsidized employment. Using this information from the State and the NDNH data, we will be able to calculate the State scores for the various work measures.

In contrast, in paragraph (a)(2), we are proposing that the State exclude all adult TANF and SSP-MOE recipients in fully subsidized employment from their calculation before submitting their data to us. However, the State must include all recipients in fully subsidized employment in the count of unemployed recipients.

Workfare programs, in the context of the TANF program, are generally considered to be work experience and community service programs; individuals participating in workfare programs are not considered as employed and are, therefore, used only in the denominator in the calculation of this bonus.

We propose to clarify in paragraph (b) that the data required in paragraph (a) must be submitted for both adult TANF recipients and adult Separate State Program—Maintenance-of-Effort (SSP-MOE) recipients for whom the State would be required to complete Sections One and Three of the SSP-MOE Data Report.

In paragraph (c), we cross-reference the requirement in § 265.3(d) of this chapter (see the TANF final TANF rule published on April 12, 1999 (64 FR 17720) that, if a State wishes to receive a high performance bonus, it must file the information in Sections One and Three of the SSP-MOE Data Report. We

believe that in order to measure the full impact or success of the TANF program or the rate of improvement in the program in moving adult recipients toward self-sufficiency, it is essential that we know what adults are receiving assistance in the separate State program(s) and what is happening to them in the areas of job entry, job retention, and earnings.

As we stated in the preamble to the TANF NPRM, published on November 20, 1997, and in the final rule, published on April 12, 1999, information on SSP-MOE programs is needed for several reasons including to ''help ensure that State decisions to establish such programs do not undermine the work provisions of the new law.'' Regarding the work measures, for example, a State could score well on a work measure by moving certain families, e.g., families with multiple employment barriers, to a separate State program where they receive no self-sufficiency services. Because this State would then be able to work intensively with the easier to serve TANF recipients, it might receive a high score on a work performance measure(s). In reality, however, it would not be performing as well as a State which achieved a similar, or even a lower, score while serving all families in its TANF program.

We will analyze the nature of benefits provided in the separate State programs as well as the information we receive from the SSP-MOE Data Report to assess how and whether to adjust a State's TANF performance data. If a State has been identified as having moved its hard-to-serve population to a separate State program, for example, we would adjust the State's high performance bonus score, if appropriate, or find the State ineligible for a bonus.

We welcome comments on the criteria that should be used to determine whether such a transfer has occurred and whether any adjustment to State high performance bonus scores is appropriate. We also welcome comments on ways in which we might make additional use of these SSP-MOE data.

In paragraph (d), we propose to require a State to inform us of the work measures on which it chooses to compete in that bonus year. It is important that a State provide this information so that we will know in advance how many States are competing in each of the measures in order to plan accordingly. We need to know the measures on which a State chooses to compete so that we can allocate the necessary time and resources to rank the States within a reasonable time frame that permits us to award the bonus funds as soon as possible and before the end of the bonus year.

We raise the following questions for public consideration:

1. Should the bonus awards in FY 2002 and beyond be based only on measures that use national or standardized data?

2. Should we permit States to file sampled data for bonus awards and, if so, what would be the rationale and what sampling specifications should be used?

Section 270.7 What Data Will We Use To Measure Performance on the Non-Work Measures?

We have proposed to base two of the three non-work measures entirely on the data from the Census Bureau. We propose to use these data to measure State performance related to the measure on family formation and stability and the measure on participation by low-income working families in the Food Stamp program. The data for the third non-work measure—participation in the Medicaid/CHIP program—will be provided by the States, based on a match between TANF data and Medicaid enrollment data.

The Census Bureau's decennial and annual demographic programs will provide uniform objective and reliable State-level data. We have proposed to award bonuses in FY 2002 and beyond based on these data for CY 2000 and CY 2001. In addition, if a State wishes to receive a high performance bonus, it must report the data in Sections One and Three of the SSP–MOE Data Report. We welcome comments on alternate measures and data sources and on whether States should have the option to compete on these non-work measures.

Section 270.8 How Will We Allocate Bonus Award Funds?

We propose in paragraph (a) of this section a funds allocation formula for FY 2002 and beyond. We considered a number of ways to design a high performance bonus award system. We rejected an approach that would have more strictly limited the number of awards, developed a formula to calculate a single numerical score for each State, or set performance or threshold levels, i.e., numerical scores which a State must exceed in order to receive a bonus.

First, we believe that a major purpose of the bonus award is to offer an incentive to States to implement programs to meet the goals and purposes of the TANF program. Therefore, in order to encourage State participation, we propose to award bonuses to a reasonable number of States rather than just a few States. We believe that proposing to award bonuses to the 10 States with the highest scores in each measure constitutes a reasonable number, i.e., a number which is large enough to reward several States, but small enough so that the performance will reflect reasonably high performance and the amount of the bonus will be a clear incentive. We also believe that awarding bonuses to the ten States with the highest scores for each measure will help to avoid the problems associated with reallocation of funds, given the limitation in the statute on the amount of a State's total bonus award, i.e., five percent of the State's family assistance grant.

Second, we believe an approach that consists of several measures, focused on different aspects of program success, and that rewards the top ten performers in each of these measures, is less complex and offers States more opportunity to demonstrate program success. Also, we did not want to set a numerical threshold based on absolute level of performance given the absence of baseline data.

We solicit the public's view on whether this approach may be more appropriate in the early days of implementing the TANF program and whether a different design may be appropriate in later years.

Specifically, in paragraph (a), we propose how we will divide $140 million in FY 2002 and beyond among the four work measures. In general, we have based this allocation formula on what we believe are the relative importance and impact of each measure. We are proposing to give more weight to absolute measures than improvement measures because scores for absolute measures will generally reflect a higher outcome than the scores for improvement measures. In addition, we believe that job entry and increase in job entry should be given more weight than the other two measures, i.e., success in the work force and increase in success in the work force. The success in the work force measures clearly are dependent on job entry, i.e., a recipient must first get a job before achieving job retention or earnings gain.

In paragraph (b), we propose to allocate $20 million to each of the three non-work measures, a total of $60 million or 30 percent of the $200 million to be awarded annually. We believe that the largest percentage of funds (70 percent or $140 million), however, should be designated for the work measures, given the importance of

work in the program. We welcome comments on and supporting rationale for alternative allocations of funds.

In paragraph (c), we explain that we will distribute the dollars allocated to each measure based on each State's percentage of the total SFAG (State family assistance grant) of the ten States that will receive a bonus. We considered other methods of allocating the bonus funds, such as allocating the amount of the bonus based on a State's rank, but we concluded that the bonus award should be in proportion to the size of the State and perhaps the number of persons potentially affected. In that context, we also considered allocating funds based on the number of children in poverty in the State, but we were concerned that this allocation method might foster unintended consequences. Therefore, we have proposed an allocation formula based on the size of the TANF grant.

We believe this to be a proportional and equitable way to allocate these funds, consistent with and a logical extension of section 403(a)(4)(B)(ii) of the Act. (This section limits the total amount payable to a State in a bonus year to no more than five percent of the State's SFAG.) Under this method, both the amount of the State's award for each measure and the maximum overall amount payable to a State would be proportional to the SFAG.

In the next section of the preamble, we include additional discussion related to measurement and allocation of funds. In light of that discussion and the provisions in this section, we raise the following questions for consideration:

1. How should the funds be distributed to the high performing States?

2. What criteria should we use to establish the distribution of funds among the various measures?

3. Should we use the criterion ''the ten States with the highest score in each measure'' as a way of distributing funds?

4. Should the percent of funds distributed between the absolute measures and the improvement measures be changed?

5. If additional measures and data sources are recommended, what percentage of funds should they receive?

6. How should we handle the situation where more than one State has the tenth highest score?

7. Should we consider setting a numerical threshold for each measure that each State would need to exceed in order to be eligible for a bonus award on that measure?

8. Should we consider other thresholds, such as not awarding a bonus to a State subject to a work participation penalty or other non-compliance penalties?

9. Should the amount of the bonus for each State be weighted by the State's ranking or score, in addition or as an alternative to the size of its State family assistance grant?

Section 270.9 How Will We Redistribute Funds If That Becomes Necessary?

In this section, we propose a method to reallocate any undistributed amount of the annual $200 million high performance bonus funds. Full distribution might not occur, for example, if the funds cannot be awarded because of the limitation on the amount payable to a State for a bonus year to no more than 5 percent of a State's family assistance grant. This section clarifies what we will do if we cannot award the full $200 million.

We propose two steps. We would first reallocate the remaining funds among the measures listed in § 270.4. If any funds still cannot be distributed within the bonus year, they will remain available for distribution in the next bonus year.

We raise the following questions for public consideration:

1. How should we redistribute funds when a qualifying State cannot be awarded the full amount of the bonus because of the limitation of the bonus to no more that five percent of its TANF grant?

2. How should we redistribute funds that cannot be distributed within a bonus year?

Section 270.10 How Will We Annually Review the Award Process?

We have proposed in this section an annual review process, as needed, to address any future circumstances or events that we cannot predict but that we anticipate may occur and for which we will need to make modifications, adjustments, or technical changes to the high performance bonus specifications. We are still learning from State experience in competing for the first year bonus awards, including the process of gathering and reporting data in FY 1999 for State performance in FY 1998. Because the high performance bonus system is new for both the States and the Federal government, we think that it is critical to be able to continue to refine our award system based on what we learn from that award process.

We also know that State TANF programs are changing and that the field of performance measurement continues to evolve. States and others are in the forefront of these activities, and we are learning from their experiences. We believe that taking these changes into account in making future awards will strengthen the process greatly. In addition, in anticipation of events occurring over which we have no control, we believe it is important that States know, to the extent possible before the measurement year, the measures, data sources, and other provisions on which we would base the bonus awards.

We propose in § 270.10 to allow for certain changes, modifications, and technical corrections. We would add new measures or make changes in the allocation formula only through regulations. We want to use this NPRM to determine if there is support for retaining some flexibility in order that we could take advantage of new developments, such as the emergence of new national data sources, to adjust to changes in external events such as lack of available data from the Census Bureau, or changes in the amount of funding available for bonus awards. We have proposed external consultation with interested parties as well as the criteria we would use to make these decisions. We welcome comments on the efficacy of this approach; we also welcome suggestions for the criteria under which such flexibility should be exercised.

Section 270.11 When Must the States Report the Adult Recipient Data and Other Information Related to Work Measures?

In paragraph (a), we propose that each State must collect quarterly the data specified in § 270.6(a) and (b) and report them semi-annually (by February 28 and August 31 of the bonus year) for the performance year (and for the comparison year if the State is competing on a work improvement measure). We propose that States collect data quarterly so that any problems that might occur in data reporting can be addressed by the State early in the bonus year. However, we are proposing to require reporting only semi-annually to minimize administrative burden.

We propose in paragraph (b) that each State must collect quarterly and submit the information in the SSP–MOE Data Report, as specified in § 270.6(c), either:

- At the same time as it submits its quarterly TANF Data Report; or
- At the time it seeks to be considered for a high performance bonus as long as it submits the required data for the full period for which this determination will be made.

These options for filing the SSP–MOE Data Report are the same as those contained § 265.3(d) of this chapter.

We are proposing in paragraph (c) to require that each State submit the list of work measures on which it is competing, as specified in § 270.6(c), by February 28 of the bonus year. This date is the same as the date proposed in paragraph (b) for the submission of the first semi-annual data report. We believe that by this date States will have determined on which measures they wish to compete and consistency of reporting dates will benefit both States and ACF.

Section 270.12 Must States File the Data Electronically?

In order to compete for a high performance bonus, we are proposing that each State must submit data electronically on the work measures and on the Medicaid/CHIP outcome measure to be included in the final rule. ACF will specify the reporting format and specifications for the work measures in program guidance after publication of a Paperwork Reduction Act (PRA) package. HCFA will also specify any specific reporting requirements.

We are proposing electronic submission for several reasons. For each collection of information, OMB regulations at 5 CFR 1320.8 require Federal agencies to evaluate whether the burden on respondents can be reduced by use of automatic, electronic, mechanical, or other technological collection techniques. This Department has for many years encouraged programs and grantees to use such non-paperwork approaches to meet data collection requirements.

With respect to the work measures, all States currently report the Emergency TANF Data Report in an electronic format that we have specified. In external consultation meetings, State representatives supported electronic submission of data reports. Therefore, we believe that electronic submission of the high performance bonus data will not be a burden on States, will reduce paperwork and administrative costs, be less expensive and time-consuming, and be more efficient for both States and the Federal Government.

Section 270.13 What do States Need To Know About the Use of Bonus Funds?

In the context of the flexibility provided to States under the TANF program, we decline to specify how States must use bonus award funds. States have the same flexibility in the use of these funds that they have in the use of TANF block grant funds.

We propose in paragraph (a) that a State must use the bonus award funds in accordance with two sections of the Act: Section 401 (Purpose) and section 404 (Use of Grants). We propose in paragraph (b) that the bonus funds are also subject to the statutory requirements and limitations in section 404 (Use of Grants) and section 408 (Prohibitions; Requirements) of the Act. In paragraph (c), we propose that, if the State uses bonus funds to provide assistance as defined in § 260.31 of this chapter, § 263.11 of this chapter also applies.

Grants made to a State under section 403 of the Act—whether TANF block grant funds, bonus award funds, or Welfare-to-Work grants—are subject to these limitations and requirements. For example, if a State uses bonus funds to provide assistance (as defined in § 260.31 of this chapter), the prohibitions against providing assistance to certain individuals in section 408 will apply. If the State does not use bonus funds to provide such assistance, these prohibitions are not applicable.

Finally, some of the general requirements in sections 404 and 408 of the Act will apply regardless of how the States choose to use these funds. For example, the 15 percent limitation on the use of TANF grant funds for administrative purposes (section 404(b) of the Act) means that any bonus award funds will be added to the State's total amount of TANF funds and the administrative cost percentage will be computed based on the total.

We propose in paragraph (d) to add, for clarity, the statutory provision that, for Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

VI. Discussion of Other Issues Related to Performance Measurement

In this section of the preamble, we discuss and raise questions concerning issues relating to absolute performance, performance improvement, threshold levels, and alternative ways to ensure an objective and fair competition. We also include a list of measures and data sources that we believe do not merit further consideration at this time, although we welcome comment on this conclusion.

A. Consideration of Issues Relating to Absolute Performance, Performance Improvement, and Threshold Levels

It is easy to understand absolute performance; whoever receives the highest or best score is the winner. However, such measures can reward high performers without additional effort on their part, and it can also discourage low performers who would need to make extraordinary progress in order to compete.

Measuring improvement, on the other hand, allows a wider range of States to compete successfully and encourages low performers to invest in greater efforts. It also recognizes that States work in different environments and that success needs to be measured in more than one way. However, use of such measures could allow a low performer to register a significant improvement while still remaining a low performer. It might also be difficult for a high performing State to compete successfully over time because it would need to continue to sustain high levels of improvement or even to maintain the same level of performance year to year.

Because these bonuses are intended for ''high performing'' States, we decided it would be appropriate to set some levels of performance. We had several options available in establishing these levels. We have proposed the threshold level as the ''top ten States'' competing in each measure. Another option would be to establish a numerical score which could be absolute, e.g., 75 percent or another score which a State would need to meet or exceed in order to be eligible to receive a bonus in a certain category, or a score tied to self-sufficiency such as one related to above poverty-level wages. A third option was to establish individually negotiated targets with each State. This last option provides the greatest flexibility to States in setting performance outcomes and competing for bonuses. However, it could be perceived as inconsistent with statutory intent and with the public's understanding of high performance. It would also entail a greater workload for States and the Department. A final option would be to raise the score each year, e.g., a 75 percent score must be achieved in FY 2002, an 80 percent score in FY 2003.

B. Consideration of Alternate Ways To Structure the High Performance Bonus To Ensure an Objective and Fair Competition: The Impact of External Factors

We believe that competition for the high performance bonus should primarily reflect a State's welfare and work strategies and should be a competition among States that is objective and fair. We can achieve this goal, to some extent, in our use of common measures and uniform, reliable

data sources, allowing for measures of both absolute and improved performance. However, there are factors over which the State has little control, such as the health of the State's economy, the demographics of its TANF caseload and its resident population, and State population growth. As a result, many individuals would like us to incorporate some adjustments for these external factors. However, the inclusion of multiple adjustment factors in some type of weighting scheme poses serious methodological problems. Such a scheme might create a more equitable starting point, but it could also lead to misunderstandings, challenges, and contentious debates.

In light of this discussion, we raise the following questions:

1. Should we attempt to develop adjustment factors in order to ensure an objective and fair competition?

2. If so, what adjustment factors should we consider and how should they be used?

3. Should we consider the use of the State's employment rate or changes in State caseloads as adjustment factors?

C. Other Measures and Data Sources Considered

We considered and evaluated a wide range of possible measures and data sources in developing this NPRM. As noted earlier in our discussion of § 270.4, one of the factors we were particularly aware of was the issue of diversity among States and how that diversity might impact the design and implementation of the high performance bonus award system. For example, under AFDC, each State defined its standard of need for assistance, set its own benefit levels, and established (within Federal limitations) income and resource limits. As a result, there were sizeable differences from State to State in the definitions used in these programs, in the level of assistance families received, and in the types of families served. Waivers from Federal requirements used by some States to test the effect of changes in certain rules increased these differences. The table below illustrates the range in State AFDC caseload sizes, case characteristics, benefit levels, employment levels, and program costs for fiscal year 1996.

Category	Range	
	Lowest	Highest
Number of families	4,700	896,000
Number of adults	3,700	821,000
Number of Children	9,100	1,805,000
Percent of families headed by one adult	57.0	83.8
Percent of families headed by two (or more) adults	0.4	18.5
Percent of families headed by no adult recipient**	7.6	38.5
Average monthly benefit per family	$118	$731
Average monthly benefit per recipient	$44	$247
Percent of recipient adults (male and female) with employment (full or part-time)	1.1%	27.3%
Average monthly earnings of families with earnings	$127	$505
Average monthly administrative expenses per family	$13	$128
Average monthly administrative expenses per recipient	$5	$49

**''No adult recipient'' means that the children are living with parents or adult caretakers who are not receiving AFDC due to a wide variety of reasons.

Since States now have even greater flexibility in designing their TANF programs, we believe this diversity across States will continue to grow. We noted some examples of these differences in a review of State TANF plans:

(1) Although assistance under the TANF statute is limited to 5 years, only 25 States have a five year limit;

(2) About half the States plan not to provide extra payments to families that have an additional child while on welfare (sometimes called a ''family cap''); and

(3) Thirty States operate or allow counties to operate ''up-front'' diversion programs. These generally involve a one-time cash payment to meet immediate needs.

Because of these differences, as we evaluated performance measures related to work, we chose not to include measures that were based solely on receipt of cash benefits or type of benefits. We believe such measures could have serious unintended effects. Instead, we focused on work measures which would gauge work and self-sufficiency performance. We discussed our rationale for this choice earlier in the preamble.

We also considered using a number of national data sources, including:

1. The Current Population Survey (CPS).—The CPS contains detailed questions related to labor force participation (e.g., employment/unemployment status; hours and weeks worked throughout the past year; and reasons for non-participation, joblessness, and part-year/part-time employment) as well as questions on whether an individual/family/household received public assistance. We seriously considered using this database. However, the CPS has a limited data set and most importantly, a small sample size. Because of the sample size, State figures may vary widely which would restrict its usefulness for awarding the high performance bonus.

2. In addition to the CPS, the data sources listed below were also found to have various limitations including inconsistent definitions, non-comparability across States, tangential relevance, and different sample populations. These databases included:

Food Stamp Quality Control Data
Internal Revenue Service Data
(PSID) Panel Study of Income Dynamics
(SIPP) The Survey of Income and Program Participation
(NLSY) National Longitudinal Survey of Youth
(NSFG) National Survey of Family Growth
(YRBSS) Youth Risk Behavior Surveillance System
(NCHS) National Center on Health Statistics
(UI) Unemployment Insurance
State administrative data

Below is a summary list of the major performance measures and data sources we considered but did not propose at this time for various reasons, including a lack of uniform national data availability, variation in definitions among States, and measures beyond the scope of the bonus.

Other Measures and Data Sources Considered:

Variable	Source
Percent of caseload entering employment without a high school diploma.	CPS.
Percent of long-term caseload entering employment	State administrative data.
Work participation rate	State administrative data.
Percent of cases that reach time limit without job	State administrative data.
Percent of TANF teens attending school or working	State administrative data.
Percent of TANF teens not attending school and not working	State administrative data.
Number of out-of-wedlock births	State administrative data; NCHS.
Recidivism rate	No data source identified.
Average length of stay on assistance	State administrative data.
Cases with transitional benefits	State administrative data.
Receipt of TANF benefit	State administrative data
Number of applicants diverted from the TANF cash assistance program	No data source identified.
Reduction in dependence	State administrative data.
Increase in number of persons in training/non-traditional employment under Welfare-to-Work program.	Department of Labor data.
Percent of children living in households with no adult male ages 21 and over.	CPS.
Educational attainment	CPS.
Improvement in immunization	No data source identified.
Proportion of recipients who receive domestic violence services	No data source identified.
Percent of current/former recipients receiving subsidized child care	State administrative data.
Quality child care	No data source identified.
Percent of caseload with paternity established	State administrative data.
Number of TANF families that have both earned income and child support paid.	State administrative data.
Percent of caseload married	State administrative data.
Percent of caseload leaving welfare for marriage	State administrative data.
Administrative cost per work placement	State administrative data.
Marriage/Divorce rates statewide	Vital statistics.
Number of children entering foster care	Adoption and Foster Care Analysis and Reporting System (AFCARS).
Percent of children in poverty	Census Bureau data.
Services to the harder to serve population	No data source identified.

We welcome comments on any of the measures or data sources we considered but rejected.

VII. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. This proposed rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. Section 403(a)(4) of the Act also requires the Department to consult with the National Governors' Association and the American Public Human Services Association in the development of a system for awarding high performance bonuses. As described elsewhere in the preamble, ACF consulted extensively with State and local officials and their representative organizations as well as a broad range of advocacy groups, researchers, and others to obtain their views. These proposed rules reflect the discussions with and the concerns of the groups with whom we consulted.

This rule is a significant regulatory action that will have an annual effect on the economy of $100 million or more, according to section 3(F)(1) of the Executive Order. This rule will determine how $200 million will be awarded to high performing States to be used to benefit the recipients of State TANF programs and will have the additional effect of improving States' efforts in implementing welfare reform. High performing States could see their State family assistance grants increase by as much as five percent. We believe the cost of competing for a high performance bonus award should be minimal since competition for these awards will be based, to the extent possible, on existing data sources.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States, the District of Columbia, and certain territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Assessment of the Impact on Family Well-Being

We certify that we have made an assessment of this rule's impact on the well-being of families, as required under section 654 of the Treasury and General Appropriations Act of 1999. The high performance bonus awards proposed in this NPRM are a component part of the TANF program and are designed to reward State efforts in strengthening the economic and social stability of families and carrying out other purposes in the statute. The NPRM does not limit State flexibility to design programs to serve these purposes.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by this Act, we have submitted the proposed data collection requirements to OMB for review and approval. We are concurrently using this NPRM as a vehicle for seeking comment from the public on these and any additional

information collection activities that they believe should be added as a part of the bonus award process.

This NPRM proposes to award bonuses, in FY 2002 and beyond, based on four work measures and three non-work measures. No reporting burden would fall on the States for two of the non-work measures for which we will use Census Bureau decennial and annual demographic program data as the data source, i.e., food stamp participation measure and measure on family formation and stability. To measure Medicaid/CHIP participation, States must match TANF data with Medicaid/CHIP enrollment data, using the information from HCFA's MSIS system and the HCFA Form 21–E.

We have computed the burden based only on the work measures and the measure of Medicaid/CHIP participation specified in § 270.4. If additional measures are added or additional reporting is required in the final rule, we will solicit comments on the increased burden of reporting through a Paperwork Reduction Act Notice.

Burden Estimate for the Work Measures

The NPRM proposes two alternative reporting mechanisms for the work measures, i.e., either the information specified in § 270.(6)(a)(1) or the data specified in § 270.6(a)(2). After a consideration of public comments, the Secretary's decision will be reflected in the final rule. Under both alternatives, the State must collect information quarterly and report it semi-annually for both the adult TANF recipients and the adult SSP–MOE recipients for whom the State reports data in the SSP–MOE Data Report.

If the State wishes to receive a high performance bonus, it must report the data in Sections One and Three of the SSP–MOE Data Report as required in § 265.3(d) of this chapter. (The burden for this reporting requirement was previously estimated in the TANF final rule, published April 12, 1999 (64 FR 17720).) We will specify the reporting format for these proposed requirements.

We estimate the burden for the first reporting alternative in § 270.6(a)(1) as 1,728 hours, based on the requirement that States report the name, birth date, and social security number of all adult TANF and SSP–MOE recipients and identify those in fully subsidized employment. Our estimate of the burden is as follows: 16 hours per response, times 54 respondents, times two (semi-annual reporting).

Because the four work measures proposed in this NPRM are substantially the same as the work measures on which we will award bonuses in FY 1999 and FY 2000, we estimate the burden for the second reporting alternative in § 270.6(a)(2) to be the same as the current number in the OMB PRA Inventory of 8,640 hours. This current number represents the annual burden estimate of collecting data from 54 respondents, responding quarterly, at 40 hours per response. (See ACF–Form 200, OMB No. 0970–0180.) The actual burden may be less since we are proposing to require that States submit quarterly data twice a year. On the other hand, the burden may be the same because the primary burden is the quarterly collection of the data rather than the semi-annual reporting of the data.

We estimate the total burden of the two reporting alternatives is 10,368 hours (1,728 plus 8,640). We realize that this number is an over-estimate, reflecting the total burden of two proposed alternatives in the NPRM, only one of which will be included in the final rule.

We believe the burden of reporting the information on work measures will be minimal, particularly if we are able to use the NDNH. In addition, States already have experience in extracting case/individual identifying information from their electronic data bases for matching purposes, including the Income and Eligibility Verification System (IEVS) matches required by statute.

Burden Estimate for the Measures on Medicaid/CHIP Participation

The Medicaid/CHIP performance measure at § 270.4(d) consists of qualifying conditions and an outcome measure. The qualifying conditions will be evaluated by HCFA based on State documentation and HCFA oversight of the Medicaid/CHIP programs. There is no new burden associated with these process measures.

The outcome measure in § 270.4(d)(4) is based on quarterly reporting of the data from a match of TANF data and Medicaid enrollment data. Because this activity is similar to State activity in matching TANF data and UI data (see § 270.6(a)(2)), we estimate that the burden will be approximately the same, i.e., 8,640 hours, excluding start-up costs. We understand that some States may not have social security numbers for CHIP recipients. In that instance, there may be an additional burden.

The total annual burden estimate includes the development of a one-time extraction program (based on our specifications), computer run-time to execute the program, the creation of an extract data file, and transmitting the information.

We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents. (Currently, American Samoa has not applied to implement the TANF program.)

The annual burden estimate for this data collection is:

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
High Performance Bonus Report: WORK MEASURES (total of two alternative measures)	54	2	96	10,368
High Performance Bonus Report: MEDICAID/CHIP MEASURE	54	4	40	8,640
Estimated Total Annual Burden Hours				19,008

We encourage States, organizations, individuals, and other parties to submit comments regarding the information collection requirements to the Administration for Children and Families, Office of Information Services, Office of Information Resource Management Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attention: Reports Clearance Officer.

To ensure that public comments have maximum effect in developing the final regulations and the data collection instrument, we urge that each comment clearly identify the specific section or sections of the proposed rule or Appendices.

We will consider comments by the public on these proposed collections of information in:

• Evaluating whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical utility;

• Evaluating the accuracy of our estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed rules between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is assured of having its full effect if OMB receives it within 30 days of publication. This OMB review schedule does not affect the deadline for the public to comment to ACF on the proposed rules. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208 New Executive Office Building, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for ACF.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any 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 in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rules will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

F. Congressional Review

This proposed rule is a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 270

Grant Programs (Social Programs); Public Assistance Programs (Welfare Programs); Recordkeeping and Reporting Requirements.

(Catalogue of Federal Domestic Assistance Programs: No. 93.558 Temporary Assistance for Needy Families (TANF) Program; State Family Assistance Grants; Tribal Family Assistance Grants; Assistance Grants to Territories; Matching Grants to Territories; Supplemental Grants for Population Increases; Contingency Fund; High Performance Bonus; Decrease in Illegitimacy Bonus)

Dated: November 17, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: November 19, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR chapter II by adding part 270 to read as follows:

PART 270—HIGH PERFORMANCE BONUS AWARDS

Sec.

Authority: 42 U.S.C. 603(a)(4)

§ 270.1 What does this part cover?

This part covers the regulatory provisions relating to the bonus to reward high performing States in the TANF program, as authorized in section 403(a)(4) of the Social Security Act.

§ 270.2 What definitions apply to this part?

The following definitions apply under this part:

Act means the Social Security Act, as amended.

Bonus year means each of the fiscal years 2002 and 2003 in which TANF bonus funds are awarded, and any subsequent fiscal year for which Congress authorizes and appropriates bonus funds.

CHIP is the Children's Health Insurance Program as described in title XXI of the Social Security Act.

Comparison year means the fiscal year preceding the performance year.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

Food Stamp Program means the program administered by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, U.S.C. 2011 et.seq.

HCFA is the Health Care Financing Administration.

Medicaid is a State program of medical assistance operated in accordance with a State plan under title XIX of the Act.

MSIS is the Medicaid Statistical Information System.

Performance year means the fiscal year in which a State's performance is measured, i.e., the fiscal year immediately preceding the bonus year.

Separate State program (SSP) means a program operated outside of TANF in which the expenditure of State funds may count for TANF maintenance-of-effort (MOE) purposes.

SSP–MOE Data Report is the report containing disaggregated and aggregated data required to be filed on SSP–MOE recipients in separate State programs as specified in § 265.3(d).

State means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

TANF means The Temporary Assistance for Needy Families Program.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: The

Assistant Secretary for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

§ 270.3 What is the annual maximum amount we will award and the maximum amount that a State can receive each year?

(a) Except as provided in § 270.9, we will award $200 million in bonus funds annually, subject to Congressional authorization and the availability of the appropriation.

(b) The amount payable to a State in a bonus year may not exceed five percent of a State's family assistance grant.

§ 270.4 On what measures will we base the bonus awards?

(a) *Performance measures: General.* We will base the high performance bonus awards on four work measures; one measure of family formation and family stability; and two measures that support work and self-sufficiency, i.e., participation by low-income working families in the Food Stamp Program and participation in the Medicaid and CHIP programs.

(b) *Work Measures.*

(1) Beginning in FY 2002, we will measure State performance on the following work measures:

(i) Job entry rate;

(ii) Success in the work force rate;

(iii) Increase in the job entry rate; and

(iv) Increase in success in the work force rate.

(2) For any given year, we will score and rank competing States and award bonuses to the ten States with the highest scores in each work measure.

(3) Each State has the option to compete on one, any number of, or none of the work measures specified in this paragraph.

(c) Measure of participation by low-income working families in the Food Stamp Program—(1) *Qualifying conditions.* In order to compete on the Food Stamp outcome measure in paragraph (c)(2) of this section, States must meet all the following qualifying conditions. The Food and Nutrition Service of the U.S. Department of Agriculture will determine whether a State is meeting these conditions through its ongoing oversight of the Food Stamp Program.

(i) The State agency has issued policy instructions or regulations clearly specifying that, at first contact with the State agency which administers the Food Stamp Program, individuals must be informed of the opportunity to apply for food stamps in accordance with 7 CFR 273.2(c)(1).

(ii) The State agency has issued policy instructions or regulations clearly specifying that application forms are to be readily accessible and available upon request, in accordance with 7 CFR 273.2(c)(3).

(iii) As evidenced through policy instructions, regulations, and administrative reviews, the State agency is complying with application processing time frames and expedited service rules, as required by 7 CFR 273.2(g).

(iv) As evidenced through policy instructions, regulations, and administrative reviews, the State agency has taken steps to prevent inappropriate denials and terminations of eligible food stamp participants who have lost TANF eligibility. Since food stamp eligibility is not based on TANF eligibility, States may not deny food stamp eligibility to a family or a family member simply because the family is ineligible for TANF.

(2) *Outcome measure.* (i) Beginning in FY 2002, we will measure the improvement in the number of low-income working families (i.e., families with children under age 18 who have an income less than 130 percent of poverty and earnings equal to at least half-time, full-year minimum wage) receiving food stamps as a percentage of the number of low-income working families (as defined in this subparagraph) in the State.

(ii) For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of CY 2000 to CY 2001, based on Census Bureau decennial and annual demographic program data.

(iii) We will rank all States that meet the conditions in paragraph (c)(1) of this section and will award bonuses to the 10 States with the greatest percentage improvement in this measure.

(d) Measure of participation by low-income families in the Medicaid/CHIP Programs—(1) *Qualifying conditions.* In order to compete on the Medicaid/Children's Health Insurance Program (CHIP) outcome measure in paragraph (d)(3) of this section, a State must meet all of the following qualifying conditions:

(i) The State has issued policy instructions or regulations clearly specifying that, at first contact with the TANF agency, an individual must be given the opportunity to apply for Medicaid in accordance with 42 CFR 435.906;

(ii) When eligibility under section 1931 of the Act is lost due to hours of, or earnings from, employment or loss of the time-limited earning disregards, the State issues to the affected family a written notice that meets the requirements of section 1925(a)(2)(A) of the Act, and a card or other evidence of the family's entitlement to assistance, as required under section 1925(a)(2)(B) of the Act;

(iii) The State has issued policy instructions or regulations clearly specifying that family members may not be terminated from Medicaid until it has been determined that they are not eligible under any other Medicaid group; and

(iv) The State has fulfilled all data requirements under the law, including being up to date on all Medicaid and CHIP data submissions and having the MSIS system on-line and operating properly.

(2) *Qualifying options.* In addition, in order to compete on the outcome measure in paragraph (d)(3) of this section, the State must have implemented at least two of the following qualifying State options:

(i) The State accepts mail-in or phone-in applications for Medicaid for families and children which can be completed without a face-to-face interview;

(ii) State Medicaid workers have been outstationed at locations in addition to the locations required under 42 CFR 435.904 (c)(1) and (c)(2);

(iii) The State has expanded Medicaid eligibility for recipient and applicant families through the use of less restrictive methodologies, authorized by section 1931(b)(2) (B) and (C) of the Act;

(iv) The State uses a definition of ''unemployed parent'' that includes parents who are employed more than 100 hours per month, as authorized under 45 CFR 233.101 and section 1931(d) of the Act;

(v) The State provides continuous Medicaid eligibility for children for a period of time without regard to changes in circumstances, as authorized by section 1902(e)(12) of the Act;

(vi) The State provides a period of presumptive Medicaid eligibility for children, as authorized by section 1920A of the Act; or

(vii) The State has simplified the enrollment and reenrollment processes for children and low-income families by implementing such improvements as shortened application forms.

(3) *Outcome Measure.* (i) Beginning in FY 2002, we will measure the improvement in the percentage of individuals receiving TANF benefits who are also enrolled in Medicaid or CHIP, who leave TANF in a calendar year and are enrolled in Medicaid or CHIP in the sixth month after leaving TANF assistance (and are not receiving TANF assistance in the sixth month).

(ii) For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of CY 2000 to CY 2001, based on a quarterly submission by the State of the above percentage as determined by matching individuals (adults and children) who have left TANF assistance and are not receiving it in the sixth month with Medicaid/CHIP enrollment data.

(iii) We will rank the performance on this measure of all States that meet the conditions in paragraphs (d)(1) and (d)(2) of this section and will award bonuses to the 10 States with the greatest percentage improvement in this measure.

(e) Measure of family formation and stability. (1) Beginning in FY 2002, we will measure the increase in the percent of children below 200 percent of poverty in each State who reside in married couple families, beginning with a comparison of data between CY 2000 and CY 2001, based on Census Bureau decennial and annual demographic program data. For any given subsequent year, we will compare a State's performance on this measure to its performance in the previous year.

(2) We will rank all States and will award bonuses to the ten States with the greatest percentage improvement in this measure.

§ 270.5 What factors will we use to determine a State's score on the work measures?

(a) *Definitions.* The work measures are defined as follows:

(1) The *Job Entry Rate* means the unduplicated number of adult recipients who entered not fully subsidized employment for the first time in the performance year (job entries) as a percent of the total unduplicated number of adult recipients unemployed at some point in the performance year. Adult recipients in fully subsidized employment are not included in the numerator but are included in the denominator.

(2) The *Success in the Work Force Rate* is composed of two submeasures defined as follows:

(i) The *Job Retention Rate* means the performance year sum of the unduplicated number of employed adult recipients in each quarter one through four who were also employed in the first and second subsequent quarters, as a percent of the sum of the unduplicated number of employed adult recipients in each quarter. (At some point, the adult might become a former recipient.) Adult recipients in fully subsidized employment are not included in either the numerator or the denominator; and

(ii) The *Earnings Gain Rate* means the performance year sum of the gain in earnings between the initial and second subsequent quarter in each of quarters one through four for adult recipients employed in both these quarters as a percent of the sum of their initial earnings in each of quarters one through four. (At some point, the adult might become a former recipient.) Earnings gains of adult recipients in fully subsidized employment are not included in either the numerator or the denominator.

(3) The *Increase in the Job Entry Rate* means the positive difference between the performance year job entry rate and the comparison year job entry rate as a percentage of the comparison year job entry rate; and

(4) The *Increase in Success in the Work Force Rate* means the positive difference between the performance year success in the work force rate and the comparison year success in the work force rate as a percent of the comparison year success in the work force rate. It is composed of two submeasures defined as follows:

(i) The *Increase in the Job Retention Rate* means the positive difference between the performance year job retention rate and the comparison year job retention rate as a percent of the comparison year job retention rate; and

(ii) The *Increase in the Earning Gain Rate* means the positive difference between the performance year earnings gain rate and the comparison year earnings gain rate as a percent of the comparison year earnings gain rate.

(b) *Ranking of States.* (1) We will measure State performance in the work measures over the course of an entire fiscal year both for the performance year and the comparison year, if applicable.

(2) We will rank the competing states on the work measures for which they:

(i) Indicate they wish to compete; and

(ii) Submit the data specified in § 270.6 within the timeframes specified in § 270.11.

(3) We will rank the States on absolute performance in the case of the two work measures in paragraphs (a)(1) and (a)(2) of this section. For the two work measures in paragraphs (a)(3) and (a)(4) of this section, we will rank States based on the percentage increase in their improvement rate in the performance year compared to the comparison year. The rank of the performance in paragraphs (a)(2) and (a)(4) of this section will be a composite weighted score of the rank of the retention and the earnings gain measures with the job retention rank having a weight of two.

(4) The rates for States submitting data for each work measure in this section will be ranked from high to low, with ''1'' being the rank for the State with the highest score. We will assign to each State not competing or submitting data for a work measure a rank that is the number following the last rank for States that properly submitted data on a timely basis and notified us of their interest in competing.

(5) We will calculate the percentage rate for each work measure to two decimal points. If we identify more than ten States due to a tie in the rate for a specific work measure, we will calculate the rate to as many decimal points as necessary to eliminate the tie.

(c) *The Improvement Rate.* The Improvement Rate means the positive percentage change between the performance year and the comparison year for each measured rate (job entry, retention, earnings gain).

§ 270.6 What data for the work measures must a State report to us?

(a) If a State wishes to compete on any of the work measures specified in § 270.5(a), it must report one of the following alternative sets of data, as specified by the Secretary. The State must collect quarterly and report semi-annually for the performance year and, if the State chooses to compete on an improvement measure, the comparison year, either:

(1) An unduplicated list of all adult recipients by name, social security number, and date of birth for each quarter; adult recipients in fully subsidized employment must be included in this list but identified separately; or

(2) Based on a match between the State's adult recipient identification data and the Unemployment Insurance employment data, the following information:

(i) The cumulative number of unduplicated adult recipients who, by the end of each quarter, were unemployed recipients at some point during the performance year. (Adult recipients in fully subsidized employment must be excluded from this data match but must be included in the count of unemployed recipients; employed adult recipients who became unemployed and entered new employment for the first time in the same quarter must also be included.);

(ii) The total number of unduplicated adult recipients employed at any time during the quarter;

(iii) The total number of employed adult recipients in paragraph (a)(2)(ii) of this section who, as a recipient in each quarter, entered employment for the first time this performance year;

(iv) The total number of employed adult recipients in paragraph (a)(2)(ii) of this section who were also employed in the following quarter;

(v) The total number of adult recipients in paragraph (a)(2)(ii) of this section who were also employed in the second following quarter;

(vi) The total amount of earnings in each quarter of all employed adult recipients in paragraph (a)(2)(v) of this section; and

(vii) The total amount of earnings in the second following quarter of all employed adult recipients in paragraph (a)(2)(v) of this section.

(b) Each State must submit the information in paragraph (a) of this section for both adult TANF recipients and adult SSP–MOE recipients for whom the State would report the data described in paragraph (c) of this section.

(c) Each State must file the information in Sections One and Three of the SSP–MOE Data Report as specified in § 265.3(d) of this chapter.

(d) Each State must specify to ACF the measures on which it is competing in each bonus year.

§ 270.7 What data will we use to measure performance on the non-work measures?

(a) We will use data from the Census Bureau's decennial and annual demographic programs to rank State performance on the measure of family formation and stability and the Food Stamp outcome measure.

(b) We will measure State performance on the Medicaid/CHIP outcome measure based on quarterly data submitted by States as determined by matching individuals who are no longer receiving TANF assistance with Medicaid/CHIP enrollment data.

§ 270.8 How will we allocate the bonus award funds?

(a) In FY 2002 and beyond, we will allocate and award $140 million to the ten States with the highest scores for each work measure as follows, subject to reallocation as specified in § 270.9:

(1) Job Entry Rate—$56 million
(2) Success in the Work Force—$35 million
(3) Increase in Job Entry Rate—$28 million
(4) Increase in Success in the Work Force—$21 million;

(b) In FY 2002 and beyond, we will allocate and award $60 million to the ten States with the greatest improvement in the non-work measures as follows, subject to reallocation as specified in § 270.9:

(1) Food Stamp Measure—$20 million
(2) Medicaid/CHIP Measure—$20 million
(3) Family Formation/Stability—$20 million

(c) We will distribute the bonus dollars for each measure based on each State's percentage of the total amount of the State family assistance grants of the 10 States that will receive a bonus.

§ 270.9 How will we redistribute funds if that becomes necessary?

(a) If we cannot distribute the funds as specified in § 270.8, due to the statutory limit on the amount of each State's bonus award, we will reallocate any undistributed funds among the measures listed in § 270.4.

(b) If funds still cannot be distributed within the bonus year, they will remain available for distribution in the next bonus year.

§ 270.10 How will we annually review the award process?

(a) *Annual determination.* Annually, as needed, we will review the measures, data sources, and funding allocations specified in this part to determine if modifications, adjustments, or technical changes are necessary. We will add new measures or make changes in the funding allocations for the various measures only through regulations.

(b) *Criteria.* We will determine if any modifications, adjustments, or technical changes need to be made based on:

(1) Our experience in awarding high performance bonuses in previous years; and

(2) The availability of national, State-reliable, and objective data.

(c) *Consultation.* We will consult with the National Governors' Association, the American Public Human Services Association, and other interested parties before we make our final decisions on performance components for the bonus awards in FY 2002 through 2003 (and beyond) and will notify States of our decisions through annual program guidance. We will also post this information on the Internet.

§ 270.11 When must the States report the adult recipient data and other information related to the work measures?

(a) Each State must collect quarterly and submit semi-annually during the bonus year the data specified in § 270.6(a) and (b) as follows:

(1) The data must be submitted by February 28 of the bonus year for the first and second quarters of the performance year and, if a State chooses to compete on an improvement measure, the first and second quarters of the comparison year.

(2) The data must be submitted by August 31 of the bonus year for the third and fourth quarters of the performance year and, if a State chooses to compete on an improvement measure, the third and fourth quarters of the comparison year.

(b) Each State must collect quarterly its SSP–MOE Data Report as specified in § 270.6(c) and submit it:

(1) At the same time as it submits its quarterly TANF Data Report; or

(2) At the time it seeks to be considered for a high performance bonus as long as it submits the required data for the full period for which this determination will be made.

(c) Each State must submit the list of work measures on which it is competing, as specified in § 270.6(d), by February 28 of the bonus year.

§ 270.12 Must States file the data electronically?

Each State must submit the data required to compete for the high performance bonus work measures and the Medicaid/CHIP outcome measure electronically in a manner that we and HCFA will specify.

§ 270.13 What do States need to know about the use of bonus funds?

(a) A State must use bonus award funds to carry out the purposes of the TANF block grant as specified in section 401 (Purpose) and section 404 (Use of Grants) of the Act.

(b) As applicable, these funds are subject to the requirements in and limitations of sections 404 and 408 (Prohibitions; Requirements) of the Act.

(c) If the State uses bonus award funds to provide assistance, as defined in § 260.30 of this chapter, the provisions of § 263.11 of this chapter also apply.

(d) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

Note: The following Appendix will not appear in the Code of Federal Regulations:

Appendix

STATE FAMILY ASSISTANCE GRANTS UNDER PRWORA

State	State family assistance grant [1]	State family assistance grant times 5 percent
Alabama	$93,315,207	$4,665,760
Alaska	63,609,072	3,180,454
Arizona	222,419,988	11,120,999
Arkansas	56,732,858	2,836,643
California	3,733,817,784	186,690,889
Colorado	136,056,690	6,802,835
Connecticut	266,788,107	13,339,405
Delaware	32,290,981	1,614,549
District of Col.	92,609,815	4,630,491
Florida	562,340,120	28,117,006
Georgia	330,741,739	16,537,087
Hawaii	98,904,788	4,945,239
Idaho	31,938,052	1,596,903
Illinois	585,056,960	29,252,848
Indiana	206,799,109	10,339,955
Iowa	131,524,959	6,576,248
Kansas	101,931,061	5,096,553
Kentucky	181,287,669	9,064,383
Louisiana	163,971,985	8,198,599
Maine	78,120,889	3,906,044
Maryland	229,098,032	11,454,902
Massachusetts	459,371,116	22,968,556
Michigan	775,352,858	38,767,643
Minnesota	267,984,886	13,399,244
Mississippi	86,767,578	4,338,379
Missouri	217,051,740	10,852,587
Montana	45,534,006	2,276,700
Nebraska	58,028,579	2,901,429
Nevada	43,976,750	2,198,838
New Hampshire	38,521,261	1,926,063
New Jersey	404,034,823	20,201,741
New Mexico	126,103,156	6,305,158
New York	2,442,930,602	122,146,530
North Carolina	302,239,599	15,111,980
North Dakota	26,399,809	1,319,990
Ohio	727,968,260	36,398,413
Oklahoma	148,013,558	7,400,678
Oregon	167,924,513	8,396,226
Pennsylvania	719,499,305	35,974,965
Rhode Island	95,021,587	4,751,079
South Carolina	99,967,824	4,998,391
South Dakota	21,893,519	1,094,676
Tennessee	191,523,797	9,576,190
Texas	486,256,752	24,312,838
Utah	76,829,219	3,841,461
Vermont	47,353,181	2,367,659
Virginia	158,285,172	7,914,259
Washington	404,331,754	20,216,588
West Virginia	110,176,310	5,508,816
Wisconsin	318,188,410	15,909,421
Wyoming	21,781,446	1,089,072
State Total	16,488,667,235	824,433,362

[1] Grants are based on the Federal share of expenditures for FY 94, FY 95 or the average of FYs 92–94, whichever is greatest.

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December 6, 1999

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902
50 CFR Parts 649 and 697
American Lobster Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 649 and 697

[Docket No. 990105002–9285–03; I.D. 110598D]

RIN 0648–AH41

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to manage the American lobster fishery in the Exclusive Economic Zone (EEZ) from Maine through North Carolina. These final regulations remove existing management measures issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and replaces them with the same and a variety of new management measures issued under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). New measures include designation of lobster management areas, restrictions on fishing gear and tagging requirements for lobster traps. In addition, these regulations establish an annual regulatory adjustment process for implementation of additional measures in consultation with the Atlantic States Marine Fisheries Commission (Commission). The intent of these regulations, in combination with state regulations governing the American lobster fishery in non-Federal waters, is to end overfishing and rebuild stocks of American lobsters.

DATES: Effective January 5, 2000.

ADDRESSES: Copies of supporting documents, including a Final Environmental Impact Statement and Regulatory Impact Review (FEIS/RIR) are available from Harold C. Mears, State, Federal and Constituent Programs Office, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Comments regarding burden estimates should be sent to: The Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Ross, NMFS, Northeast Region, 978–281–9234.

SUPPLEMENTARY INFORMATION: These final regulations remove existing regulations issued under the authority of the Magnuson-Stevens Act. NMFS has withdrawn the approval for the American Lobster Fishery Management Plan (FMP) because the majority of the lobster fishery (approximately 80 percent) takes place in state waters. Regulatory action in the EEZ (3 nautical miles [nm] (5.56 kilometers [km]) to 200 nm (370.4 km) from shore) alone, even a total moratorium on harvesting lobsters, would not end overfishing of the resource. Adequate state lobster conservation measures, therefore, are essential to end overfishing of American lobster. It is clear to NMFS that it is not possible to meet the rebuilding requirements of the Magnuson-Stevens Act without full cooperation of the Atlantic coast states. Accordingly, NMFS is implementing Federal lobster conservation measures in the EEZ under the authority of the ACFCMA as part of Federal/state cooperative management.

Section 804(b) of ACFCMA authorizes the Federal government to issue regulations governing fishing in the EEZ that are compatible with the effective implementation of the Commission's American Lobster Interstate Fishery Management Plan (ISFMP) and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. Given limitations on NMFS to manage the lobster resource throughout its range, NMFS has determined that regulations under ACFCMA in conjunction with the ISFMP, constitute the best option for management of the American lobster resource.

The Commission approved Amendment 3 to the American Lobster ISFMP in December 1997. The goal of Amendment 3 is to have a healthy lobster resource and a management regime that provides for a sustained harvest of lobsters, maintains appropriate opportunities for participation, and provides for cooperative development of conservation measures by all stakeholders. Amendment 3 includes recommended measures in Federal waters as well as in state waters (specific measures are described later in this preamble), and it establishes a procedure whereby fishermen, including some who fish exclusively in Federal waters, may make recommendations for further management measures to meet predefined targets designed to end overfishing and facilitate stock rebuilding.

The Magnuson-Stevens Act requires NMFS to develop plans to end overfishing and rebuild overfished stocks. NMFS has identified lobster as overfished throughout its range. This finding has been confirmed by an independent review panel convened by NMFS and the Commission. Therefore, NMFS is required by the Magnuson-Stevens Act to develop a plan to end overfishing of lobsters and rebuild the lobster fishery. These regulations, together with a process for working with the Commission to devise future measures, constitute a plan to meet this mandate.

On March 27, 1996, NMFS first proposed to withdraw approval of the FMP and issue complementary regulations under the ACFCMA (61 FR 13478). NMFS proposed that the final withdrawal of the approval of the FMP, and the removal of its implementing regulations, would occur upon completion of an effective state management program developed by the Commission.

Amendment 3 is a comprehensive plan for managing the lobster fishery in state and Federal waters. While it does not specify future steps that are needed to rebuild egg production and end overfishing of lobster, it does provide a framework for the development of those measures to rebuild the resource.

Status of Stock

The most recent NMFS assessment of the lobster stock concluded that it is overfished throughout its range (22nd Northeast Regional Stock Assessment Workshop Document 96–13, dated September, 1996). Background information on the status of lobster stocks and the lobster fishery was presented in the preamble to the proposed rule (64 FR 2708) and is not repeated here. Additional background is available and contained in a FEIS/RIR prepared by NMFS for this rule (see **ADDRESSES**). Lobster Conservation Measures Currently in Place

Most current management measures and prohibitions for Federal waters were promulgated under the authority of the Magnuson-Stevens Act and are codified at 50 CFR part 649. These include:

1. A moratorium on new entrants into the fishery through December 31, 1999,

2. A prohibition on the possession of lobsters bearing eggs or from which eggs have been removed by any means,

3. A prohibition on the possession of lobster meat and detached tails, claws or other parts of lobster,

4. A prohibition on the possession of V-notched lobsters (*i.e.*, female lobsters that have carried eggs and are marked with a V-shaped cut in the tail),

5. A requirement to install a biodegradable ''ghost'' panel in each trap (to allow lobsters to escape from a lost trap),

6. A minimum carapace size of 3¼ inches (8.26 cm),

7. A requirement to install escape vents on traps,

8. A prohibition on the possession at any time of more than six lobsters per person when aboard a head, charter, or commercial dive vessel,

9. A requirement that gear be marked in order to identify the permit holder,

10. A prohibition on the interstate or international trade of live whole lobsters smaller than the Federal minimum size, and

11. A landing limit of 100 lobsters (or parts thereof) per day, up to a maximum of 500 lobsters (or parts thereof) per trip of 5 or more days for fishermen using non-trap methods (this limit is imposed by regulations issued under the authority of the ACFCMA and is codified at 50 CFR 697.7).

This final regulation continues all of these measures, as well as imposes new measures described herein, but implements them under authority of the ACFCMA instead of the Magnuson-Stevens Act. Accordingly, this rule removes the lobster regulations currently codified at 50 CFR part 649 and replaces them with regulations codified at 50 CFR part 697.

Measures Adopted by the Commission

The states, through adoption of Amendment 3 to the Commission's American lobster ISFMP, recognized the need to end overfishing and rebuild stocks of American lobster. Approved in December 1997, this amendment established an 8 year stock rebuilding schedule to restore egg production which would be 10 percent or more of the level produced by an unfished lobster population. The associated management measures are discussed in the proposed rule (64 FR 2708), and are not repeated here. The Commission approved Addendum 1 to that amendment on August 3, 1999. That action approved additional area-based measures identified by the lobster conservation management teams for the seven lobster conservation management areas, comprised of industry representatives and established by the Commission. Except for Area 6 (Long Island Sound), each of the seven areas includes waters under Federal jurisdiction. The Commission recommended to the Secretary that he implement compatible regulations in Federal waters. The final regulations being issued by this rulemaking implement the Commission's recommendations contained in Amendment 3 of the American Lobster ISFMP. The Commission's recommendations contained in the more recent Addendum 1, including imposing limitations on fishing for lobster based on historical participation and fishing practices in selected management areas, will be evaluated in accordance with Federal rulemaking and public review procedures. Toward this end, an advance notice of proposed rulemaking was published on September 1, 1999 (64 FR 47756) to promote awareness of potential eligibility criteria for future access to lobster management areas and to discourage shifts in the type of gear used to harvest lobster by Federal permit holders.

The Commission area-specific management measures currently include:

Area 1, Inshore Gulf of Maine

(1) A 1000 limit on the number of traps a vessel may set in fishing year 1999, and a 800 trap limit per vessel in fishing year 2000.

(2) A prohibition on the possession of lobsters with a carapace length greater than 5 inches (12.7 cm).

Area 2, Inshore Southern New England

A plan to cap, and then reduce, the maximum number of traps a vessel may set.

Area 3, Offshore Waters (Entirely in Federal Waters)

The Commission, in Amendment 3, recommended that NMFS implement a limit of 2000 traps per vessel. The Commission in Addendum 1 to the American Lobster ISFMP recommends trap limits based upon historical participation.

Areas 4, 5 and 6, Long Island and South

Trap reductions based upon historical participation in these management areas.

Outer Cape Cod Lobster Management Area

The same trap limits as for Area 1, but no maximum carapace size.

The Commission also adopted several measures for state waters which are not directly related to the trap fishery. For example, under Amendment 3, it adopted a prohibition on spearing lobsters, and also established limitations on harvesting lobsters by non-trap gear.

The NMFS Plan

The NMFS Plan retains all current Federal measures for the management of the lobster fishery, but implements them by regulations issued under the authority of the ACFCMA. In addition, the following new measures are implemented to make the Federal plan compatible with the Commission's American Lobster ISFMP. Note that some measures apply to all Federal permit holders while others apply only in specific areas.

1. *Moratorium on new entrants into the fishery.* There are currently approximately 3000 vessels with permits to fish for lobster in Federal waters. Under the current moratorium scheduled to end on December 31, 1999, no new permits are being issued. Persons may enter the fishery only by purchasing an existing vessel that already has a limited access permit and then contacting NMFS to request a permit transfer. The moratorium is continued. This will prevent any increase in the number of vessels permitted to take lobsters in Federal waters. An increase could undermine the conservation benefits of other measures.

2. *Designation of Lobster Management Areas.* In order to be compatible with the Amendment 3, the boundaries of the lobster management areas specified by the Commission are adopted. The coordinates marking the perimeter of the areas are found in the regulations at § 697.18.

3. *Lobster management area designation for vessels fishing for American lobsters with traps.* Owners of vessels that elect to harvest American lobsters with traps are required to inform NMFS each year of the lobster management areas they intend to set trap gear in. Beginning May 1, 2000, vessels issued a limited access American lobster permit and fishing with traps, in any of the lobster conservation management areas (specified in § 697.18), must have on board the vessel a management area designation certificate or valid limited access American lobster permit specifying the management area(s) the vessel is allowed to fish in.

For fishing years 2000 and beyond, a vessel owner fishing with traps capable of catching American lobster must inform NMFS in which lobster management areas the vessel intends to fish when the vessel owner applies for or renews his/her limited access American lobster permit. Once a vessel has been issued a lobster management area designation certificate or limited access American lobster permit specifying the lobster EEZ management areas in which the vessel may fish, no

changes to the EEZ management areas specified may be made for the vessel for the remainder of the fishing year unless the vessel becomes a replacement vessel for another qualified vessel.

A vessel issued a lobster management area designation certificate or limited access American lobster permit specifying more than one EEZ management area must abide by the most restrictive management measures in effect for any one of the specified areas, regardless of the area being fished, for the entire fishing year.

4. *Near-shore area trap limits.* In order to cap effort in the near-shore areas, Federal permit holders fishing in or electing to fish in Areas 1, 2, 4, 5, 6, the Outer Cape Lobster Management Area and/or only the Area 2/3 Overlap, are limited to setting a maximum of 1000 traps in fishing year 1999 and to setting a maximum of 800 traps in fishing year 2000. Further trap limits or alternative conservation equivalent measures may be required in the future to meet stock rebuilding objectives. The purpose of this approach is to ensure that the conservation benefits that might be achieved by other measures are not lost by further expansion of fishing effort in the near-shore areas. Alternative and/or additional management measures other than those pertaining to trap limits will be considered in Federal waters in accordance with Commission recommendations and the adaptive management procedures identified in § 697.25 of the regulations.

5. *Near-shore area maximum trap size.* One way to increase fishing effort without increasing the number of traps in the water is to increase the size of those traps. The larger the trap, the more lobsters it can hold. To minimize this, the size of lobster traps in the near-shore areas is restricted. To allow Federal permit holders a phase-in period to replace traps currently being fished that are larger than those allowed in Amendment 3, a two-step process restricting the size of traps fished in any nearshore area(s) is implemented.

Beginning January 5, 2000, vessels cannot possess or deploy traps larger than 25,245 cubic inches (413,690 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of runners, in any nearshore area (Area 1, 2, 4, 5, 6, the Outer Cape Lobster Management Area, and/or only in the Area 2/3 Overlap). Beginning May 1, 2003, vessels cannot possess or deploy traps larger than 22,950 cubic inches (376,081 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of runners, in any nearshore management area.

6. *Escape vents.* Lobster trap gear must have a rectangular escape vent of at least 5¾ inches by 1 15/16 inches (14.6 cm by 4.92 cm), or two circular portals of at least 2 7/16 inches (6.19 cm) in diameter.

7. *Area 1 maximum carapace size.* In order to be compatible with the Commission's American Lobster ISFMP recommendations, the maximum carapace size is 5 inches (12.7 cm) in all areas, for Federal permit holders fishing in or electing to fish in Area 1. The carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace (the unsegmented shell of the lobster). The purpose of this measure is to protect large females that are capable of producing many eggs. This measure will provide increasing conservation benefits as the number of larger individuals increases in the American lobster population.

8. *Off-shore area trap limits and maximum trap size.* Federal permit holders fishing in, or, electing to fish in Area 3, or only Area 3 and the Area 2/3 overlap, are limited to setting no more than 2000 traps from the permitted vessel in fishing year 1999 and no more than 1800 traps from the permitted vessel in fishing year 2000. Further reductions of this trap limit may be required to meet lobster stock rebuilding objectives. The size of lobster traps in Area 3 and in the Area 2/3 overlap also is restricted. To allow Federal permit holders a phase-in period to replace traps currently being fished that are larger than those allowed in Amendment 3, a two-step process restricting the size of traps fished only in Area 3, or only in Area 3 and the Area 2/3 Overlap is implemented.

Beginning January 5, 2000, vessels fishing with traps only in Area 3 or only in Area 3 and the Area 2/3 Overlap cannot possess or deploy a trap larger than 33,110 cubic inches (542,573 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of runners.

Beginning May 1, 2003, vessels fishing with traps only in Area 3 or only in Area 3 and the Area 2/3 Overlap cannot possess or deploy a trap larger than 30,100 cubic inches (493,249 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of runners. Vessels fishing only in Area 3 or only in Area 3 and the Area 2/3 Overlap are allowed a higher maximum number of traps and a larger maximum trap size in order to offset the additional costs and time required for fishing offshore. Federal permit holders who fish or elect to fish in Area 3 and any of the near-shore areas (Areas 1, 2, 4, 5, 6, and/or the Outer Cape Lobster Management Area), except the Area 2/3 Overlap, are limited to setting a maximum of 1000 traps from the permitted vessel in fishing year 1999 and to setting a maximum of 800 traps from the permitted vessel in fishing year 2000. Federal permit holders who elect to fish in Area 3 and any of the near-shore areas (Areas 1, 2, 4, 5, 6 and/or the Outer Cape Lobster Management Area) except the Area 2/3 Overlap, are prohibited from setting traps that are larger than the near-shore maximum size limit. Alternative and/or additional management measures will be considered in Federal waters in accordance with Commission recommendations and procedures identified in § 697.25.

9. *Trap tag allocations.* As a way to enforce the trap limits for each lobster management area, effective May 1, 2000, each trap set by a Federal permit holder must have a trap tag attached to the trap bridge or central cross-member. Lobster fishermen are required to purchase tags from NMFS or a NMFS-authorized distributor. On or after January 1, 2000, a permit holder letter will be sent to all eligible Federal limited access American lobster vessels informing them of the costs associated with the tagging requirement and directions for obtaining tags. Each permit holder will be allowed to purchase tags, up to the maximum number of traps allowed in his or her area(s), plus 10 percent to cover in-season losses. Those persons fishing in near-shore areas will be allowed to purchase up to 880 tags in fishing year 2000. Those persons fishing only in Area 3 or only in Area 3 and the Area 2/3 Overlap will be allowed to purchase up to 1980 tags in fishing year 2000. Tags will only be valid for one year and must be replaced each year. Tags may not be sold, transferred or given away. The requirement to affix a tag to each trap, beginning May 1, 2000, will be in lieu of the current requirement that gear be marked with a vessel's official number, Federal permit or tag number, or other specified form of identification.

10. *State/Federal coordination.* NMFS may consider alternative tagging programs with cooperating states through appropriate formal agreements to allow American lobster permit holders to use trap tags issued by those agencies to fish for lobster in the EEZ in lieu of trap tags issued by NMFS. NMFS will provide notice, as appropriate, to American lobster permit holders concerning procedures for procuring trap tags.

11. *Non-trap harvest restrictions.* The regulations pertaining to non-trap

landing limits that are currently in place are continued. It is unlawful for a vessel that takes lobster by a method other than traps to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea, or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted.

12. *Modifications to the plan.* On or before February 15, 2001, and at least annually on or before February 15, thereafter, NMFS may publish a proposed rule for evaluation of additional or different management measures for Federal waters to meet ISFMP and/or lobster stock rebuilding objectives. Some of the measures that might be considered are (1) continued reductions in fishing effort (*e.g.,* number of traps fished) and (2) increases in the minimum harvestable size. NMFS will consult with the Commission in the identification of measures.

NMFS endorses an area management approach which allows industry-tailored management measures to meet industry needs on an area-by-area basis. Under this process, NMFS will work in partnership with the Commission and the states, under the provisions of the American Lobster ISFMP, in continuing efforts to develop a unified ''seamless'' approach to bridge state and Federal jurisdictions on an area-by-area basis.

Comments and Responses

NMFS received hundreds of written comments on the American Lobster proposed rule during the public comment period, which ran from January 11—February 26, 1999. Written comments were received from four members of the Senate of the United States, three members of the U.S. Congress, the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, the U.S. Department of Interior, eight state fishery and environmental protection agencies, one state senator, nine fishing industry associations, two environmental groups, and 748 individuals. One environmental group and two individuals supported implementation of the management measures as identified in the proposed Federal rule for American lobster. Conversely, 642 individuals submitted letters and postcards that expressed general opposition to the implementation of management measures in the proposed federal rule for American lobster. All of the comments were carefully considered. Concerns or opposition to specific aspects of the proposed Federal rule are identified and responded to here.

Comment 1: Four hundred and seventy-eight commenters requested that NMFS delay implementation of management measures until the Commission approves the LCMT area management plans identified in the American Lobster ISFMP Amendment 3, addenda 1 and 2, scheduled for public hearings during 1999.

Response: Selected aspects of the LCMT plans, *e.g.,* management measures to control fishing effort in some areas based upon historical fishing practices, were recently approved by the Commission through an addendum to the American Lobster ISFMP. Approval of other measures proposed by the LCMTs to end lobster overfishing has been further postponed until a date uncertain, pending the results of an updated stock assessment. NMFS believes that continued delay for full consideration of the LCMT plans until a date yet to be determined by the Commission jeopardizes needed management measures to protect the lobster resource. On the basis of the recent ISFMP addendum, an advance notice of proposed rulemaking was published on September 1, 1999, in the **Federal Register**, to seek public comment on the potential for compatible action to limit fishing effort in the EEZ on the basis of historical participation. Additional area-specific management measures in the EEZ, as may be recommended by the Commission under future revisions to the ISFMP, will be considered under separate rulemaking. Also, supplemental measures to achieve the ISFMP's objective to end overfishing of American lobster will be implemented as described in the preamble to this final rule during subsequent years of the stock rebuilding period.

All management measures in the final rule, with the exception of trap tag requirements and the requirement for possession of a certificate or a permit relating to area management designations, become effective January 5, 2000. A fishing area certificate or a permit relating to area management designations and the lobster trap tag program becomes effective May 1, 2000, coincident with the 2000/2001 Federal fishing year. The delay of the certificate or a permit requirement relating to area management designations affords the time required for notification to Federal lobster permit holders and the subsequent response and mailing of the certificates or permits. The delay of the trap tag requirements allows additional time for coordination of trap tag regulations with the Commission and state fishery agencies, and will also allow additional time for the selection of a trap tag vendor and subsequent purchase and deployment of tags by Federal lobster permit holders coincident with the beginning of the next fishing year.

Comment 2: Fourteen commenters opposed implementation of uniform trap limits as described in the proposed rule, and provided recommendations for alternative methods to determine trap allocations, especially allocations based on historic trap levels.

Response: The capping and reduction of fishing effort, through uniform trap limits, is an important first step in reducing lobster fishing mortality that, when combined with other management measures, will increase the effectiveness of those measures in achieving ISFMP objectives to end overfishing and rebuild stocks of American lobster. The LCMTs have submitted area management proposals to the Commission, including management measures to control effort (some of which involve historic participation considerations) and increase egg production. The Commission adopted a two-phase approach to incorporate the LCMT recommendations, which will involve two addenda to Amendment 3 to the ISFMP. Addendum 1 incorporates measures from the LCMT proposals directed at controlling fishing effort, while other management measures to rebuild lobster stocks will be addressed in Addendum 2. The Commission held public hearings during April-May 1999 on Addendum 1, and will hold additional hearings on Addendum 2 in the future to receive public comments on egg production objectives and other facets of lobster management on an area by area basis. Since lobstermen throughout the range of the resource often fish in more than one management area, and since the plans vary with respect to proposed regulatory measures (including trap allocation strategies), these hearings provide an essential mechanism to enable an integrated public and policy evaluation of a unified approach for lobster area management. On August 3, 1999, the Commission approved guidelines as part of Addendum 1 to Amendment 3 of the ISFMP for the determination of trap limits based upon historical participation in certain lobster management areas. As a result of that action, an advance notice of proposed rulemaking was published on September 1, 1999 (64 FR 47756), to seek public comment on whether there is a need to restrict access of Federal permit holders to the lobster EEZ fishery on the basis of historical participation. Continued Federal rulemaking, along with the associated biological and

economic analyses, may be initiated in the near future.

Comment 3: Forty-eight commenters felt that NMFS should adopt a plan and regulations that more specifically complement the Commission plan, especially with regard to implementation dates for default measures, including trap limits and trap tags.

Response: NMFS is attempting to the extent practicable to implement EEZ regulations compatible with those in state waters identified in the ISFMP. One of the ISFMP goals is to minimize inconsistencies between state and Federal management regimes. The successful implementation of needed measures to achieve lobster management objectives is contingent not only on the resolve of state agencies to achieve those objectives, but also by the Commission's timeframe for the technical, public and policy review of area management proposals. The successful attainment of management goals is also influenced by the ISFMP's specifications of mandatory regulations in state waters, the establishment of a compliance schedule for implementation of those measures, and the inclusion of recommendations in the ISFMP for actions in the EEZ. Area management is further challenged by the time required to implement regulatory measures in state waters on a state by state basis, which can vary from several days to several months. Similarly, timing of lobster management measures in the EEZ is subject to Federal legislative requirements and rulemaking.

With regard to the establishment of a resource-wide trap tagging program, the Commission recommends an implementation date of January 1, 2000, rather than the May 1, 1999, implementation date for Federal waters referenced in the proposed rule. Accordingly, NMFS is delaying the implementation of a trap tag program for Federal lobster permit holders until the beginning (May 1) of the Federal lobster fishing year in the year 2000.

In response to public comments, NMFS has decided, beyond fishing year 2000, not to identify, at this time, continued trap reductions as a ''default'' management measure. Instead, NMFS will evaluate forthcoming Commission recommendations for resource-wide management of American lobster, based upon the Commission's review and approval of conservation-equivalent proposals submitted by the LCMTs. Thus, NMFS is attempting to be as compatible as possible with ISFMP implementation dates, yet retaining the commitment to implement additional management measures during the stock rebuilding period necessary to end overfishing and rebuild stocks of American lobster.

Comment 4: Twenty-seven commenters objected to the mutual exclusion provisions of the proposed rule which would prohibit vessels from fishing in the offshore area if any nearshore management area was elected, and would prohibit vessels from fishing in any of the nearshore management areas if the vessel elected the offshore management area.

Response: This ''mutual exclusion'' provision has been deleted from the Federal regulations to be compatible with the Commission's ISFMP management measures. Accordingly, the final rule allows Federal lobster permit holders access to both inshore and offshore waters. A vessel issued a lobster management area designation certificate or limited access American lobster permit specifying more than one EEZ management area must abide by the most restrictive management measures in effect for any one of the specified areas, regardless of the area being fished, for the entire fishing year.

Comment 5: Several commenters stressed the need for the regulations to be adaptable for each lobster management area, preferably through the use of industry LCMTs, to fit the needs and fishing patterns of the industry in each area.

Response: The regulations were developed to accommodate consideration of unique management strategies for each of the lobster management areas. Proposals submitted by the respective LCMTs have been evaluated and approved by the Commission during the approval procedures for Addendum 1 to Amendment 3 of the ISFMP. See response to Comment 2. At such time when the Commission may adopt future modifications to LCMT proposals, NMFS will consider these changes, along with biological and socio-economic analyses, through rule-making procedures.

Comment 6: One commenter does not believe that American lobsters are overfished and, therefore, no additional management measures are necessary.

Response: NMFS disagrees. The most recent NMFS assessment of the lobster stock concluded that the resource is overfished throughout its range (22nd Northeast Regional Stock Assessment Workshop Document 96–13, dated September 1996).

Comment 7: Eight commenters stated that the measures identified in the proposed rule do not adequately demonstrate that the proposed management measures will end overfishing, increase egg production, or protect the lobster resource.

Response: Management measures in Federal waters alone cannot end overfishing or rebuild American lobster stocks. Since most of the lobster fishery takes place in state waters, a joint management approach in cooperation with the states and Commission is the best way to protect the lobster resource. NMFS intends to work closely with the Commission and its LCMTs to implement whatever further compatible regulations are necessary to end overfishing and rebuild the lobster resource.

Comment 8: Fifty-six commenters stated that NMFS should revise the proposed gear marking requirements and allow vessels to continue to use buoys instead of radar reflectors on lobster trawls containing more than three traps when fishing within 12 nm (22.2 km) of shore. A requirement to use radar reflectors would be cost prohibitive, unnecessary, and could become a hazard to navigation in heavily fished areas where dense concentrations of reflectors could appear as a solid land mass on ship radar.

Response: NMFS agrees, and will maintain ''status quo'' gear marking requirements.

Comment 9: One commenter felt NMFS should not mandate the compass direction of gear marking trap trawls consisting of more than three traps, but should allow fishermen to determine the appropriate direction.

Response: NMFS disagrees. This requirement, contained in current regulations, is necessary to facilitate the enforcement and standardization of gear marking practices throughout the range of the resource.

Comment 10: Several commenters stated that there is no accurate up-to-date stock assessment or industry information (e.g., landings data, fishing effort) upon which to base management decisions.

Response: NMFS disagrees. See response to Comment 6. The next stock assessment, as well as a peer review of that assessment, has been scheduled by the Commission to take place during the Fall 1999. The conclusion that American lobster is overfished is based upon the best available scientific information, as required by the ACFCMA. NMFS agrees, however, that statistics on landings and fishing effort should be improved to better characterize the resource and the lobster fishery, for example, through increased sea sampling and mandatory reporting at the vessel and dealer level on a trip-

by-trip basis. The associated requirements for such a program to monitor the eventual success of fishery management measures are being developed under the auspices of the State/Federal Atlantic Coastal Cooperative Statistics Program (ACCSP).

Comment 11: Two commenters felt NMFS should increase the sea sampling program for vessels using trap gear.

Response: NMFS agrees that there is a need to increase sea sampling. However, increasing sea sampling is restricted by budgetary constraints. NMFS has consulted with the Maine Department of Marine Resources to enhance sea sampling of American lobsters in Maine state waters during 1999.

Comment 12: Five commenters supported continuation of the current moratorium on new entrants in the Federal lobster fishery until lobster is no longer overfished.

Response: The current moratorium has been extended.

Comment 13: Twenty-two commenters felt that license holders with Federal limited access lobster licenses who have not harvested lobsters within a predetermined time period should lose their ability to renew their permits.

Response: Current Federal regulations for Federal American lobster (limited access) permit holders require annual renewals, but do not require that the permit be used in order for it to be renewed. The potential and rationale for requiring participation in the lobster fishery as a requirement to renewal is currently being evaluated through an advance notice of proposed rulemaking (64 FR 47756).

Comment 14: Fifteen commenters supported the use of historic participation and historic trap allocations when determining where a lobsterman is allowed to fish and how much trap gear an individual may have in the water at any one time.

Response: Industry-wide evaluation of lobster management area plans and management alternatives, including historic participation, is being coordinated through the Commission's adaptive management procedures. See Response for Comment 2.

Comment 15: Two hundred and three commenters supported implementation of a management plan for the offshore area proposed by the Atlantic Offshore Lobstermen's Association (AOLA).

Response: A primary component of the AOLA plan involves a capping of fishing effort based upon historic participation in the Area 3 fishery. See response to Comment 2.

Comment 16: Five commenters stated that the expansion of the offshore lobster fishery in the past 10 to 15 years represents a shift in traditional fishing practices of the industry and should not be the basis for higher trap allocations.

Response: A higher trap limit in the offshore EEZ (Area 3) is based upon the Commission's recommendations and the historical character and economics of that fishery sector. Although not always the case, vessels in excess of 50 feet (15.24 meters) are required to prosecute the offshore fishery. Operating expenses are generally higher for these larger boats. Generally, it has also been necessary for these vessels to fish a greater number of lobster traps in efforts to increase and maintain harvest levels to offset the higher operational costs, as well as to adequately ensure effective fishing operations offshore. Therefore, in an attempt to achieve parity with inshore vessels in terms of impacts from reduction in trap limits, a higher trap limit is justified.

Comment 17: Sixty-two commenters supported the coast-wide implementation of a maximum carapace size limit, varying from 4¼ (11.43 cm) to 5½ inches (13.97 cm), for American lobster. Several of the commenters identified the benefit of maintaining a broodstock of large, prolific, female egg-bearing lobsters, which also have more viable and healthier eggs than lobsters at the current minimum legal size of 3¼ inches (8.26 cm).

Response: This rule implements a 5-inch (12.7 cm) maximum size, as recommended in Amendment 3 of the Commission's American Lobster ISFMP for the Area 1 (Gulf of Maine) lobster management area, in part, to maintain a long standing management measure in this fishing region. NMFS agrees that the implementation of a maximum size limit has benefit to the rebuilding of lobster stocks, but this benefit at the current time is limited, due to the paucity of larger lobsters since most lobsters are harvested before they become sexually mature. NMFS has determined that the uncertain benefits of the maximum size limit in areas other than Area 1 are outweighed by the costs of fishermen adjusting to such a measure. Nevertheless, the measure has strong support in the Gulf of Maine fishery as an area-specific regulation, and has been in place in Maine state waters for a number of years. On balance, therefore, since the maximum size limit is not a new measure for many fishermen, continuing the status quo provides some conservation benefit without introducing new management measures.

Comment 18: Four commenters opposed the coast-wide implementation of a maximum carapace size limit of 5 inches (12.7cm) for American lobster. One commenter objected, identifying the high percentage of larger lobsters its members harvest and the adverse economic impact of a maximum gauge size would have on its members. Another commenter identified the need for ''trophy lobsters'' by its members and objected to implementation of a maximum carapace size limit restriction on the dive industry.

Response: A maximum size requirement is being implemented only in Area 1 (Gulf of Maine), as recommended in the ISFMP.

Comment 19: Three commenters expressed general concern about the continuing buildup in the number of traps fished by individual fishermen and the resulting increase in fishing effort on the lobster resource. Commenters stated that the practice of setting traps to stake out or claim productive fishing areas is becoming more common, and this, in turn, forces all other lobstermen to increase their traps to hold on to their existing fishing grounds.

Response: Concern regarding increasing fishing effort in the American lobster fishery was noted in the Commission's American lobster ISFMP and the Federal Draft Environmental Impact Statement and Regulatory Impact Review (DEIS/RIR). Measures under this final rule cap fishing effort in both the nearshore and offshore EEZ. Further restrictions on fishing effort may be evaluated under the ISFMP provisions in future years in order to achieve stock rebuilding objectives for the American lobster resource.

Comment 20: Fifty-two commenters supported a ban on the harvest of American lobster by non-trap fishing gear (otter trawls, dredges, gillnets, diving).

Response: EEZ management measures continue a newly implemented (March 1998) landing limit of 100 lobsters (or parts thereof) per day, up to a maximum of 500 lobsters (or parts thereof) per trip of 5 or more days using non-trap methods. This possession limit allows for a legitimate bycatch of lobsters by non-trap gear, but creates a disincentive to target lobsters, thereby eliminating the potential for an unpredictable increase in effort by fishing vessels that are being severely restricted in other fisheries. Under this measure, historical levels of harvest by the non-trap fishery are not anticipated to be substantively impacted, resulting in a no-net decrease in revenues for approximately 76 percent of participants in this fishery.

On the basis of information available to NMFS, additional restrictions on the non-trap fishing sector, which accounts for approximately 2.2 percent of total annual lobster landings, are not warranted at this time.

Comment 21: One commenter stated that the proposed Federal regulations have failed to define a recreational dive vessel, one that is not a charter boat.

Response: The definition for ''recreational fishing vessel'' has been clarified in the regulations to exclude ''commercial'' dive vessels. A commercial dive vessel means any vessel carrying divers for a per capita fee, a charter fee, or any other type of fee.

Comment 22: One commenter sought clarification on whether the restricted gear areas apply to the sport diving community.

Response: Restricted gear areas (50 CFR § 697.23) apply only to lobster traps and mobile gear.

Comment 23: One commenter supported continuation of Federal landing limits of 100 lobsters (or parts thereof) per day up to a maximum of 500 lobsters (or parts thereof) per trip of 5 days or more on the non-trap gear sector (otter trawl, dredge, gillnet, divers).

Response: This restriction will be continued in the current regulations.

Comment 24: One commenter sought clarification on whether Federal landing limits of 100 lobsters per day up to a maximum of 500 lobsters per trip of 5 days or more would apply to commercial dive vessels or if commercial dive vessels would be limited to six lobsters per person on board.

Response: The possession limits for commercial dive vessels is six or fewer American lobsters per person on board the vessel. See § 697.7(c)(2)(i)(C).

Comment 25: Twenty-four commenters opposed any management measure that would result in an increase in the minimum carapace size of 3¼ inches (8.26 cm).

Response: An increase in the minimum carapace size as a fishery management measure is not currently included in the Federal regulations.

Comment 26: Forty-one commenters supported an increase in the minimum legal size for American lobster. Several proposals recommended gradual incremental carapace increases spread out over multiple years with the most support centered on four 1/16 of an inch (0.159 cm) increases over a 5-year period. Several commenters felt the gauge increase provided the single most effective conservation benefit to the lobster resource of any identified management measure.

Response: Proposals to increase the minimum size of American lobster have been controversial due to potential and/or perceived economic impacts of marketing a slightly larger and marginally more expensive lobster. In addition, there has been concern over the financial impacts of a minimum size increase on those overseas markets that prefer a smaller-sized lobster. However, NMFS agrees that an increase in the minimum legal size has the potential to be an effective management measure in achieving ISFMP stock-rebuilding objectives. The potential for achieving this benefit is being evaluated for several lobster management areas by peer review and deliberations among the respective LCMTs through the Commission's adaptive management procedures. In response to recommendations contained in the ISFMP, NMFS has initiated consultations with the Canadian government concerning coordination of any future gauge size increases in both U.S. and Canadian waters.

Comment 27: Sixty commenters supported a Federal requirement to v-notch the tail section of egg-bearing female lobsters throughout the range of the resource. Several commenters wanted the definition of what constitutes a v-notched lobster to match the more restrictive Maine regulations.

Response: A requirement to v-notch lobsters in Federal waters alone would not be compatible with the ISFMP, and benefits associated with the mandatory v-notching of lobsters have been disputed. However, NMFS has accepted the ISFMP recommendation to continue the prohibition on the possession of V-notched female lobsters in the EEZ. The current definition of a v-notched lobster conforms with the Commission's definition. NMFS is open to further refinement of this definition in consultation with the Commission.

Comment 28: One commenter opposed v-notching the tail section of egg-bearing female lobsters, expressing concerns about an increased likelihood of bacterial infections to the cut tail flipper of v-notched lobsters and questionable conservation benefits of the practice.

Response: See response for Comment 27.

Comment 29: Eight commenters supported a regulation requiring the owner-operator to be present on board whenever the vessel is fishing.

Response: Such a regulation at this time has not been considered for management of American lobster because it has not been proposed under the ISFMP. However, it is open for future consideration through the ISFMP's adaptive management procedures, and as may be appropriate, through subsequent Federal rulemaking procedures.

Comment 30: Several commenters supported the need for a per vessel trap limit of 800 traps in the nearshore area by fishing year 2000.

Response: For fishing year 1999, the trap limit is 1000 per vessel, and for fishing year 2000, the trap limit is 800 per vessel.

Comment 31: Six commenters did not support the use of trap limits as a means to end overfishing of lobsters. Commenters indicated that trap limits would be too difficult to enforce and felt that trap reductions would force fishermen to fish more frequently due to economic necessity, which would increase the risk to personal health and safety.

Response: Enforcement of a trap tag program has been a topic of concern and discussion throughout the development of the ISFMP. The Commission's Law Enforcement Committee, comprised of state and Federal law enforcement representatives, is addressing how best to enforce trap tag programs, given the importance of this management measure in reducing lobster fishing mortality and achieving ISFMP stock rebuilding objectives for American lobster. The impacts of management measures on fishing practices and the behavior of fishermen are difficult to predict. However, NMFS believes that most lobster fishermen will abide by the trap limits, notwithstanding enforceability concerns of the measures.

Comment 32: Several commenters wrote in support of implementing maximum size limits on lobster traps as specified in the Commission's ISFMP and allowing for an exemption process for individuals with traps that exceed the specified maximum size.

Response: To phase-in the implementation of a maximum size for American lobster trap gear in the EEZ, the regulations allow a 10-percent overage to the maximum trap size recommended by the ISFMP until May 1, 2003, at which time the maximum trap size will be compatible with the recommendations in the Commissions ISFMP. This phase-in will help minimize economic burdens on lobstermen who currently use larger traps.

Comment 33: Two commenters objected to the implementation of a trap tag program for Federal permit holders, and identified the measure as an unfunded Federal requirement that will be expensive to comply with.

Response: NMFS believes that a trap tag program is an essential component of the American Lobster ISFMP to help ensure enforceability of trap limits in both state and Federal waters throughout the range of the American lobster.

Comment 34: Fifteen commenters supported the implementation of a trap tag program to enforce proposed trap limits on Federal permit holders, but stressed the need to implement the requirement in coordination with the Commission. Commenters also stated that NMFS should recognize state tagging programs and require only one tag per trap to avoid duplication.

Response: Implementation of some area management measures, such as trap limits, may initially result in duplication and/or differences between state and Federal regulations on a lobster management area by area basis. NMFS, working with the Commission, will consider ways to streamline and jointly administer such regulations with cooperating states through appropriate formal agreements.

Comment 35: One commenter felt the current moratorium on the issuance of new permits in Federal waters should be eased by allowing a limited number of new permits for young people in the fishery.

Response: NMFS believes that this would be counter to the objectives of the moratorium and the ISFMP goals during the American lobster stock rebuilding period.

Comment 36: Thirty commenters supported increasing the minimum size of required rectangular escape vents from 1¾ inches (4.45 cm) by 5¾ inches (14.61 cm) up to 1 15/16 inches (4.92 cm) by 5¾ inches (14.61 cm). A complementary circular vent size increase providing equivalent conservation was also supported.

Response: Federal regulations will implement increased sizes of escape vents for all lobster traps deployed or possessed in the EEZ, or deployed, or possessed on or from a vessel issued a Federal limited access lobster permit. The specifications for escape vents are: a rectangular portal with an unobstructed opening not less than 1 15/16 inches (4.92 cm) by 5¾ inches (14.61 cm) or two circular portals with unobstructed openings not less than 2 7/16 inches (6.19 cm) in diameter.

Comment 37: Twenty-six commenters objected to an increase in the minimum size of required rectangular escape vents, arguing that the increased vent size would allow legal lobsters to escape from the trap.

Response: The implementation of an increased vent size, as recommended in the ISFMP, is a necessary component of measures to rebuild stocks of American lobster, *i.e.,* to help ensure the escapement of sub-legal size lobsters.

Comment 38: Fourteen commenters stated that NMFS should implement measures, including a control date, which would maintain the current structure of the industry and prevent vessels from shifting from non-trap gear to trap gear.

Response: The potential for a shift in effort from non-trap gear to trap gear is difficult to predict based on information before the agency at this time. The design and rationale of measures to address this potential, given this lack of information, is not possible without a more comprehensive evaluation of this concern. NMFS will consider public comments on potential limited access through the Advance Notice of Proposed Rulemaking that was published on September 1, 1999 (64 FR 47756).

Comment 39: One commenter supported the implementation of a prohibition on spearing lobsters.

Response: This prohibition is included in the final rule.

Comment 40: Several commenters objected to the boundary line between the Area 1 and Area 3 lobster management areas that occurs farther offshore from the line approved under the American Lobster FMP.

Response: Designation of the boundary line as currently defined reflects the current consensus, in collaboration with the lobster industry, as referenced in Amendment 3 to the American Lobster ISFMP.

Comment 41: Two individuals supported the use of seasonal closures to all lobster fishing as a management measure to end overfishing of lobster and allow for better enforcement of proposed Federal trap limits.

Response: Seasonal closures as a management approach have not been evaluated under the ISFMP. Such closures may be, however, appropriate for public review and consideration through deliberations of the LCMTs.

Comment 42: Six commenters proposed that the entire Gulf of Maine north of 42° should be one management area, primarily to ensure enforcement of the 5 inch (12.7 cm) maximum carapace size prohibition in the offshore areas of the Gulf of Maine.

Response: This suggestion would not be compatible with the lobster area designations, and associated boundary lines, recommended by the Commission and its member states under Amendment 3 to the ISFMP. The waters north of 42° encompass separated portions of Lobster Management Area 1, the Outer Cape Management Area, and Lobster Management Area 3.

Comment 43: Six commenters expressed concern that restrictive trap limits and trap reductions in Federal waters would result in a shift of effort to state waters with less restrictive regulations.

Response: The trap limits in Federal waters for fishing years 1999 and 2000 are similar to the trap limits for state waters in the Gulf of Maine and southern New England, as recommended in the ISFMP. There will be an annual adjustment of additional or different management measures for Federal waters which may include, but not be limited to, continued reductions in fishing effort and/or other management area-specific measures as may be recommended by the Commission to end overfishing and rebuild stock of American lobster. The behavior of fishermen and associated fishing practices, which may occur due to differing management measures in state and Federal waters, are difficult to predict. The potential impacts if they occur can be addressed through the ISFMP's adaptive management provisions, and adjustments to EEZ regulations for American lobster can be accomplished through Federal rulemaking procedures.

Comment 44: One commenter felt that the entire offshore management area 3 should be closed to the harvest of American lobster to protect the population of large lobsters which may replenish the nearshore areas with larval and juvenile lobsters.

Response: NMFS is aware of no compelling information which would justify closure of the Area 3 fishery to attain ISFMP objectives. In the absence of this information, such an action would not be based on the best scientific information available and would not be fair and equitable to the offshore EEZ industry sector. Geographical and seasonal closures of management areas or portions thereof, are a possible regulatory measure which may be potentially considered under the adaptive management provisions of the ISFMP.

Comment 45: One commenter identified the need to prevent or reduce mortality on softshell lobsters, lobsters which have just molted or shed their shell.

Response: Although NMFS agrees that it is important to protect softshell lobster, specific regulations for their protection have not been proposed under the ISFMP. Appropriate management measures, in consultation with the LCMTs, can be addressed during future years of the American

lobster stock rebuilding period through the ISFMP adaptive management provisions.

Comment 46: One commenter supported implementation of lobster management area lines in Federal waters, as specified in the Commission's lobster ISFMP Amendment 3.

Response: The final rule implements the lobster management areas as specified in Amendment 3 of the ISFMP.

Comment 47: Twenty-five commenters expressed concern that the trap limits specified in this final rule could actually result in an increase in the number of traps fished. Commenters identified concerns over allowing permit holders currently fishing less than the proposed limits to increase their traps up to the proposed limit. In addition, a larger trap limit in Management Area 3 may attract nearshore vessels into Area 3, thereby increasing effort in the offshore fishery.

Response: The behavior of fishermen and associated changes in fishing practices may or may not occur, and are difficult to predict. See response to Comment 45. NMFS questions whether new trap limits in nearshore and offshore EEZ waters would actually attract vessels to Area 3, since Federal permit holders fishing only in nearshore waters have always had this option. Those who have historically fished nearshore, and now opt to fish both nearshore and offshore, would have to abide by the stricter nearshore trap limits, regardless of where the fishing for lobster occurs.

Comment 48: Seven commenters stated that proposed trap limits and escape vent regulations would create economic hardship for Federal permit holders who have historically fished primarily for black sea bass and also hold a Federal lobster permit. Commenters recommended an exemption or waiver for vessels legally fishing for black sea bass so the traps could be fitted with nonconforming escape vents and still retain American lobster.

Response: A previous evaluation of this suggestion in 1986 (51 FR 19210) under the New England Fishery Management Council's FMP concluded that such a measure is not justified or appropriate for management of the lobster resource. Such a measure could have the unintended effect of creating a loophole for Federal permit holders intending to fish primarily for black sea bass and yet would allow the retention of a significant harvest of lobsters, and would compromise the enforceability of the vent size requirement in the lobster fishery. NMFS concludes that, on balance, the need to maintain the integrity of the vent size requirement, and its benefits as a lobster management measure, outweigh the loss resulting from a possible but unquantified escapement of black sea bass through the required size vents of trap fishing gear. The final rule minimizes hardship on Federal permit holders, while initiating necessary additional management measures to end overfishing and rebuild stocks of American lobster. The rule requires vessels with a Federal limited access lobster permit fishing with traps to comply with lobster escape vent requirements specified in § 697.21(c).

Comment 49: Five commenters stated the need to allow vessels to fish under their particular area regulations for Area 2 or Area 3 when fishing in the area defined as the Area 2/3 Overlap.

Response: NMFS has made this change to the regulations.

Comment 50: One commenter asked why replacement tags will be limited to only 10 percent of the annual trap tag allocation.

Response: The 10-percent initial limitation for replacement tags is based upon the successful implementation of an identical limitation in a trap tag program which has been in existence in Maine waters for a number of years, and upon Commission recommendations for future implementation of trap tag programs in state and Federal waters. These recommendations were developed jointly among state, NMFS, industry, and law enforcement representatives to provide uniformity between state and Federal programs. The 10-percent initial limitation also serves to streamline the administrative logistics of a trap tag program in Federal waters and minimizes potential abuse of trap tag allocations. The regulations provide for reissuance of lobster tags above the 10-percent annual tag allocation to accommodate catastrophic loss of tags. A request for the reissuance of tags above the 10-percent limit must be submitted in writing to the Regional Administrator and a decision will be reached in the number of replacement tags, if any, to be issued, on a case-by-case basis.

Comment 51: One commenter requested that NMFS recognize and respect the Commission's management tool of conservation equivalency which allows states to develop management measures which are equal to, or more restrictive than, what is called for in the ISFMP.

Response: NMFS agrees and acknowledges the provisions for conservation equivalency in the ISFMP. As conservation equivalent measures are proposed and approved by the Commission, NMFS will evaluate such measures and, as appropriate, consider them for implementation in the EEZ through Federal rulemaking procedures.

Comment 52: One commenter stated that lobstermen fishing exclusively in state waters should not be limited to Federal trap limits, even if they hold a Federal lobster permit.

Response: NMFS disagrees. Federal lobster permit holders must abide by stricter Federal regulations, when such regulations exist, even when fishing in state waters. This promotes enforceability and consistency between state and Federal jurisdictions. A vessel fishing exclusively in state waters has the option of turning in the Federal permit.

Comment 53: One commenter asked for clarification on whether federally permitted lobster fishermen could sell their lobsters to federally permitted dealers only or to other dealers, as well.

Response: Current and continuing regulations prohibit the sale of American lobster by federally permitted vessels to any dealer, unless the dealer has a valid Federal dealer's permit to purchase, possess, or receive for a commercial purpose, American lobster.

Comment 54: Several commenters stated that NMFS should implement horsepower and vessel length restrictions that have been implemented in other Federal fisheries to curb an increase in fishing effort in the offshore fishery.

Response: Although such restrictions could provide a disincentive for inshore vessels to participate in the offshore EEZ fishery, the lobster fishery has historically, and continues to be, primarily an inshore fishery. Horsepower and vessel length restrictions however, have recently been recommended by the ASMFC for the offshore fishery, and may be evaluated through future Federal rulemaking procedures.

Comment 55: One commenter asked for clarification on several aspects of the Federal regulations (§ 697.12) concerning at-sea sea sampler/observer coverage; specifically, can a lobster vessel continue to fish once notified that the vessel has been selected to take a sea sampler/observer; does the sea sampler/observer provide his/her own liability insurance; and does the sea sampler/observer provide his/her safety equipment such as the survival suit?

Response: Once a vessel is requested to carry a NMFS-approved area sea sampler/observer, that vessel may not engage in any lobster fishing operations unless a sea sampler/observer is on board, or until NMFS waives the

requirement. It would be the responsibility of the vessel owner to arrange for and facilitate sea sampler/observer placement. In similar situations for other fisheries, NMFS has helped arrange or provided guidance regarding liability coverage and access to survival gear. See the regulations at 50 CFR 600.746.

Comment 56: Several commenters asked NMFS to specify more clearly the ghost panel requirement, since no trap is made entirely of wood.

Response: The requirements relating to a ghost panel for lobster traps not constructed entirely of wood have been clarified and are specified in § 697.21(d).

Comment 57: One commenter noted that the approved Area 1 line heading west does not hit land at the northernmost part of Cape Cod, MA and requested NMFS look closely at this line and work with the Commission to correct this error.

Response: This oversight was acknowledged during public hearings relating to proposed addendum 1 to the ISFMP. Accordingly, this final rule changes the Area 1 line to reflect the correction proposed by the Commission.

Comment 58: One commenter opposed the proposed Federal requirement to display lobsters traps for an on-shore count, upon request by an authorized officer, to verify the number of lobster traps being fished in compliance with limits on lobster trap allocations.

Response: NMFS agrees, and concludes that the proposed regulation is burdensome and ineffective for the intended purpose of ensuring compliance with the trap limit requirement, and, therefore, has deleted the provision.

Comment 59: Several commenters opposed the wording requiring notification of lost trap tags as not practical, and stated that NMFS should reconsider this provision.

Response: NMFS has reconsidered the logistics requiring notification of lost tags, and has increased the notification from 24 hours to ''as soon as feasible, but not more than 7 days after tags have been discovered lost.'' This notification may be made by letter or fax to the Regional Administrator.

Comment 60: Seven commenters requested that NMFS extend the comment period to allow adequate time to review and respond to measures described in the proposed Federal rule.

Response: NMFS extended the public comment period from February 10, 1999, to February 26, 1999. A second request to further extend this period through March 15, 1999, was not approved, since the February 26 extension was determined to afford adequate time for the public to provide comments on the proposed rule.

Comment 61: One commenter requested NMFS review the coordinates identifying points Q and R which delineate the boundary for Area 6 in § 697.31, which describe the lobster management areas. The commenter stated that these coordinates have been transposed by the Commission and in the proposed Federal rule.

Response: NMFS has made this correction for both Area 2 and Area 6.

Changes From the Proposed Rule

Changes were made to several sections of the proposed rule to clarify the measures, respond to public comments, and to ensure consistency with other fishery regulations. Changes were made as follows:

In § 697.2, the definition of ''dealer'' was added.

In § 697.2, the definition of ''Dive boat'' was modified to add the word ''commercial'' and the word ''boat'' was changed to ''vessel''. The intent of this modification is to clarify and differentiate any vessel carrying divers for a per capita fee, a charter fee, or any other fee, from other recreational fishing vessels where any lobsters taken are not intended to be, or are not, traded, bartered, or sold.

In § 697.2, the definition of ''recreational fishing'' was added.

In § 697.2, the definition of ''recreational fishing vessel'' was added.

In § 697.2, the definition of ''scrubbing'' was removed. The reference to the definition occurred in § 697.20 ''Size, harvesting and landing requirements'' in paragraph (e) which has been more clearly described as ''Removal of eggs'', eliminating the need to define the word ''scrubbing'.

In § 697.2, the definition of ''trap'' was revised to include the sentence ''Red crab fishing gear, fished deeper than 200 fathoms (365.8 m), is gear deemed not to be a trap for the purposes of this part, and is not subject to the provisions of this part.''. The exemption from lobster regulations for red crab fishing gear is in existing regulations and was added because it was inadvertently omitted in the proposed rule.

In § 697.4, paragraph (a)(1), the text was revised to more clearly indicate that vessels currently holding a limited access American lobster permit issued under § 649.4 do not need to renew their existing permit upon transfer of management authority from the Magnuson-Stevens Act to the ACFCMA.

In § 697.4, paragraph (a)(3), the text regarding change of ownership was revised by adding the phrase ''and management area designation, when required'' to clearly indicate that lobster management area designations are presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for the purposes of replacing the vessel.

In § 697.4, paragraph (a)(7), was redesignated as (a)(7) and the text was simplified. Paragraph (a)(7) was expanded to more clearly indicate the date of implementation for the management area designation requirement is specified as May 1, 2000, and now includes text on the management area designation requirements previously located at § 697.32(a). See the text describing additional § 697.32 revisions located further along in this section.

In § 697.4, paragraph (c), the phrase ''lobster management area designation, as specified in § 697.18, the vessel will fish if fishing with traps capable of catching American lobster'' was added to the vessel permit requirements, to incorporate the requirement to declare the lobster management area(s) the vessel will specify, as part of the annual permit renewal process.

In § 697.4, paragraph (d) was added to consolidate and clarify the trap tag information requirements for vessels fishing with traps, previously located at § 697.34(a).

In § 697.5, paragraphs (d), (e), (f), and (k) were revised to eliminate a referral to see similar text found in § 697.4 and, in place of the referral, text was added to specifically apply to requirements for operator permits.

In § 697.6, paragraphs (b), (c), (r), (i), (j), (k), and (m) were revised to eliminate a referral to see similar text found in § 697.4 and § 697.5 and, in place of the referral, text was added to specifically apply to requirements for dealer permits.

In § 697.7, paragraphs (c), (d), and (e) containing all lobster prohibitions and presumptions were revised and consolidated under paragraph (c) for clarity. Paragraph (c)(1) now contains prohibitions previously identified as (c), paragraph (c)(2) now contains prohibitions previously identified as (e), and paragraph (c)(3) now contains prohibitions previously identified as (d) in the proposed rule. Paragraph (d) now

contains prohibitions for Atlantic sturgeon.

In § 697.7, paragraph (c), redesignated as (c)(1), the phrase ''or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to do any of the following:'' is a continuation of existing regulations inadvertently omitted from the proposed rule text and was added back to the prohibitions. On October 11, 1996, the Sustainable Fisheries Act (SFA) was signed into law and amended, among other statutes, the ACFCMA (16 U.S.C. 5101 *et seq.*) to allow fishing for lobster by vessels issued Maine State American lobster permits in designated areas of the EEZ. These areas are often referred to as Maine pocket waters. The SFA provides that any person holding a valid permit issued by the State of Maine may engage in lobster fishing in these pocket waters, if such fishing is in accordance with all other applicable Federal and state regulations. These pocket waters are small areas of the EEZ that lie between two areas of State waters, created by islands near the coast of Maine.

In § 697.7, paragraph (c)(1)(vii) was added to the Prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel trap gear in excess of the trap limits specified in § 697.19. This management requirement was identified under management measures in the Proposed Rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1) (xix) and (xx) were added to the Prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to refuse or fail to carry a sea sampler/observer if requested to do so by the Regional Administrator, or to fail to provide a sea sampler/observer with required food, accommodations, access, and assistance, as specified in § 697.12. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxi) was added to the prohibitions section to make it unlawful to for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxii) was added to the Prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ from a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps. This management requirement was identified under management measures in the Proposed Rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxiii) was added to the Prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to fish for, take, catch, or harvest lobster on a fishing trip in or from the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof) for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxiv) was added to the prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof) for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxv) was added to the prohibitions section to make it unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to transfer or attempt to transfer American lobster from one vessel to another vessel. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(1)(xxvi) was added to the prohibitions section to make it unlawful, beginning May 1, 2000, for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s) as required under § 697.4(a)(7). This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2), redesignated as (c)(1)(ii), the phrase ''up to the time when a dealer receives or possesses American lobster for a commercial purpose,'' was added to clarify that the prohibition against possession of lobster parts in violation of the mutilation standards applies up to the point of possession by a licensed dealer.

In § 697.7, paragraph (c)(2)(vi) was added to the prohibitions section to make it unlawful for any person to assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved sea sampler/observer aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(vii) was added to the prohibitions section to make it unlawful for any person to refuse to carry a sea sampler/observer if requested to do so by the Regional Administrator. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(viii) was added to the prohibitions section to make it unlawful for any person to refuse reasonable assistance to either a NMFS-approved sea sampler/observer conducting his or her duties aboard a vessel. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xvi) was added to the prohibitions section to make it unlawful for any person to violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xvii) was added to the prohibitions section to make it unlawful for any person to possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ from a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xviii) was added to the prohibitions section to make it unlawful for any person to fish for, take, catch, or harvest lobster on a fishing trip in or from the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof) for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xix) was added to the prohibitions section to make it unlawful for any person to possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof) for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(2)(xx) was added to the prohibitions section to make it unlawful for any person to transfer or attempt to transfer American lobster from one vessel to another vessel. This management requirement was identified under management measures in the proposed rule, but was inadvertently omitted from the prohibition section at that time.

In § 697.7, paragraph (c)(7), redesignated as (c)(1)(viii), the word ''trap'' was added to clarify NMFS' intent to exclude non-trap gear from the trap gear requirements to mark, vent, tag, panel, and limit the maximum trap size.

In § 697.7, paragraphs (c)(1)(ix) through (c)(1)(xiii) were added to address the lag in implementation of the lobster trap tag requirements, which will also replace the existing gear marking requirements, effective May 1, 2000.

In § 697.7, paragraph (e)(1), redesignated as (c)(2)(i), paragraph (E) was added. This text, which addresses the regulations relating to the areas often referred to as Maine pocket waters, was inadvertently omitted from the proposed rule text, and is a continuation of existing regulations.

In § 697.7, paragraph (e)(2), redesignated as (c)(2)(ii), the phrase ''or unless the vessel or person holds a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in § 697.24.'' was added. This text, which addresses the regulations relating to the areas often referred to as Maine pocket waters, was inadvertently omitted from the proposed rule text, and is a continuation of existing regulations.

In § 697.7, paragraph (e)(5), redesignated as (c)(2)(v), the phrase ''or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in § 697.24,'' was added. This text, which addresses the regulations relating to the areas often referred to as Maine pocket waters, was inadvertently omitted from the proposed rule text, and is a continuation of existing regulations.

In § 697.7, paragraph (d)(1), redesignated as (c)(3)(i), the phrase ''or parts thereof'' was added to the first sentence to clarify the intent to include lobster parts as well as whole lobsters taken in violation of Federal regulations. The word ''whole'' was added to the first sentence to clarify dealer possession requirements. The words ''or foreign'' was added to the second sentence to clarify that lobsters harvested by non-U.S. vessels in a foreign country are exempted from the identified Federal regulations.

In § 697.7, paragraph (d)(2), redesignated as (c)(3)(ii), in the first sentence, the phrase ''or parts thereof possessed at or prior to the time when the parts are received by a dealer'' was added to clarify that possession of parts prior to possession by a dealer is prohibited. In the same sentence, the phrase ''or parts thereof'' was added to clarify that possession of parts prior to possession by a dealer is prohibited.

In § 697.8, paragraph (d) was revised by adding the phrase ''over 25 ft (7.6 m) in registered length, fishing in the EEZ and'' to make the non-permanent marking requirements applicable to vessels carrying recreational fishing parties on a per capita basis or by charter, compatible with the vessel marking requirements for each vessel

issued a limited access American lobster permit.

In § 697.9, paragraph (b) was added to notify permit holders, as applicable, to be alert for communication conveying enforcement instructions.

In § 697.20 paragraphs (c)(1) and (c)(2), the phrase ''Subject to the rebuttable presumption in § 697.7(d),'' was added to clarify exemptions to the mutilation requirements if it can be shown the American lobsters were harvested by a vessel without a Federal limited access American lobster permit that fishes for American lobsters exclusively in state waters; or are from a charter, head, or commercial dive vessel that possesses or possessed six or fewer American lobsters per person aboard the vessel, and the lobsters are not intended for sale, trade, or barter; or are from a recreational fishing vessel.

In § 697.20 paragraphs (c)(1) and (c)(2), the phrase ''prior to offloading from a vessel'' was removed, and the phrase ''before, or at the time of landing'' and the phrase ''up to the time when a dealer first receives or possesses American lobster'' were added to clarify the prohibition against mutilation applies on board the vessel and up to the point of purchase by a dealer.

In § 697.20, paragraph (e), the title was revised by removing the word ''scrubbing'' and inserting the phase ''Removal of eggs'' to more clearly describe the contents of the paragraph. In addition, the text in paragraph (e) was revised and clarified by adding the text ''including, but not limited to the forcible removal, or removal by chemicals, or other substances or liquids''.

In § 697.21, paragraphs (a) and (c) were combined and redesignated as § 697.21(a), to allow the continuation of the current Federal gear marking requirements until the trap tag marking requirement is implemented on May, 1, 2000.

In § 697.21, paragraph (b), the text was re-labeled from ''Gear configuration'' to ''Deployment and gear configuration'' and the text was rewritten to refer to the gear areas identified in paragraph (b)(4). Paragraph (b)(4) of this section was rewritten to identify and continue the existing gear marking requirements currently in place, which were inadvertently omitted in the proposed rule.

In § 697.21, paragraphs (d) through (g) were redesignated as § 697.21, paragraph (c) through (f), because, as described previously, paragraphs (a) and (c) are combined and redesignated as § 697.21(a).

In § 697.21, paragraph (e), redesignated as paragraph (d), the phrase ''excluding heading or parlor twine and the escape vent'' was added to the introductory sentence to clarify the fact that no lobster trap is made entirely of wood.

In § 697.21, paragraph (f), redesignated as paragraph (e), the paragraph was revised to allow for and to describe an exemption period, extending until April 30, 2003, to the maximum trap size restriction for vessels currently fishing with traps in excess of the identified maximum trap size.

In § 697.21(f)(1), redesignated as paragraph (e)(2), the text was modified to clarify that the larger offshore maximum trap size applies to vessels who elect to fish only in EEZ Offshore Management Area 3 or EEZ Offshore Management Area 3 and the Area 2/3 Overlap.

In § 697.21, paragraph (g), redesignated as paragraph (f), the paragraph was revised to specify that the trap tag requirement will be implemented beginning on May 1, 2000.

As described previously, § 697.34 was removed and the regulatory text was redesignated as § 697.7, containing prohibitions and § 697.19, containing the trap tag measures. The following text provides specific information on the removal or redesignation of § 697.34.

Subpart C and section § 697.30 of Subpart C, containing the Egg Production Rebuilding Schedule and Adaptive Management Adjustments—Purpose and Scope text, was deleted. Subpart C represented a continuation of general provisions and lobster management measures which were more appropriately contained in Subpart A—General Provisions, and Subpart B—Management Measures. The following text addresses other sections of Subpart C which were either redesignated as other sections, or removed in whole or in part to provide the reader with clearer information on the regulatory text of the lobster management measures in this final rule.

Section § 697.31, describing the coordinates for the lobster management areas, was redesignated as § 697.18 to enhance the readability of the document. In addition, § 697.31 (a)(1) through (a)(9) was redesignated as § 697.18 (a) through (i) and § 697.31(b) is removed.

In § 697.31, paragraph (a)(1), redesignated as § 697.18(a), the narrative at the end of the EEZ Nearshore Management Area 1 was modified to clarify the description of the boundary line from the Maine coast along the seaward EEZ boundary back to point A.

In § 697.31, paragraphs (a)(2) and (a)(7), redesignated as § 697.18 (b) and (g), the point coordinates designated as Q and R, which help define the EEZ Nearshore Area 2 and Nearshore Area 6 were revised to correct an error. Point Q was relabeled as point R and point R was relabeled as point Q.

In § 697.31, paragraph (a)(4), redesignated as § 697.18(d), the EEZ Offshore Management Area 3 boundary coordinate designated as point C was modified to be consistent with the EEZ Nearshore Area 1 boundary coordinate designated as point C which follows the Loran C navigation frequency coordinate 9960–X–25600.

In § 697.31, paragraph (a)(7), redesignated as § 697.18(g), the title and introductory text were modified by removing the word ''EEZ''. Nearshore Management Area 6 is entirely within state waters and, as noted during the public comment period, a more accurate description of Area 6 would not include a reference to the EEZ for this management area.

In § 697.31, paragraph (a)(1) and (a)(8), redesignated as § 697.18 (a) and (h), the point coordinates '' G1'' identified as 42°04.25′ N. lat. and 70°17.22′ W. long., ''G2'' identified as 42°02.84′ N. lat. and 70°16.1′ W. long., and ''G3'' identified as 42°03.35′ N. lat. and 70°14.2′ W. long. were added. The boundary line separating EEZ Nearshore Management Area 1 and EEZ Nearshore Outer Cape Lobster Management Area does not come to land at point G: therefore, the EEZ Nearshore Management Area 1 and EEZ Nearshore Outer Cape Lobster Management Area are not effectively separated as intended. This discrepancy was identified during the public comment period on the proposed rule and was discussed and addressed by the Commission during development of Addendum 1 to the ISFMP. To facilitate enforcement of area based management measures, the three new point coordinates, which are compatible with those proposed by the Commission in Addendum 1, were added to EEZ Nearshore Management Area 1 and EEZ Nearshore Outer Cape Lobster Management Area to clearly delineate and separate these management areas.

In § 697.32, paragraphs (a)(1) through (a)(4) and (a)(9), were redesignated as § 697.4, paragraph (a)(7)(i) through (a)(7)(v). The text describes the election of lobster management areas which will become part of the annual vessel permit renewal process and is more appropriately included in the vessel permit renewal section, § 697.4(a)(7).

In § 697.32, paragraphs (a)(5) through (a)(8), were removed because similar language is more appropriately located in § 697.19, the section containing

regulations on trap limits and trap tag requirements for vessels fishing with traps.

In § 697.32, paragraph (a)(1)(i), redesignated as § 697.4 (a)(7)(i), May 1, 2000, was specified as the date of implementation of the requirement to have a lobster management area designation certificate or valid limited access American lobster permit containing the elected management area designation(s) on board all vessels with a limited access lobster permit fishing with traps to allow adequate time for notification, mailing and return of permit holder area designation election forms prior to implementation of the requirement.

In § 697.33, paragraphs (a) through (d), redesignated as § 697.19 paragraphs (a) and (b), were extensively rewritten to remove the mutual exclusion requirement which prohibited vessels electing any of the nearshore management areas from also electing to fish in the Offshore Management Area 3. Vessels may elect to fish in any or all of the lobster management areas, but must fish by the most restrictive regulations that apply to any of the management areas elected, regardless of which management area the vessel may currently be fishing in.

In § 697.33, paragraphs (a) through (d), redesignated as § 697.19 paragraphs (a) and (b), were rewritten to clarify the management measure requirements for the Area 2/3 Overlap. All vessels electing the Area 2/3 Overlap alone, or in addition to any of the nearshore management areas must abide by the most restrictive management measures in effect for any of the elected nearshore management areas while fishing in the Area 2/3 Overlap. All vessels electing the Area 2/3 Overlap and only the offshore management Area 3 must abide by the management measures in effect for the offshore management Area 3 while fishing in the Area 2/3 Overlap. All vessels electing to fish only in the Area 2/3 Overlap must abide by trap and trap tag allocations requirements applicable to the nearshore management areas as specified in § 697.19.

The trap limits and other trap management measures contained in § 697.33 and the trap tag management measures contained in § 697.34 were combined for reader clarity and are redesignated § 697.19. Section 697.33, paragraphs (a) through (d), were consolidated and redesignated as § 697.19, paragraphs (a) and (b), and describe the trap limits for the EEZ nearshore and offshore lobster fishery for fishing years 1999 and 2000 and § 697.34, paragraph (b) was redesignated as § 697.19, paragraph (d)(1), and describes trap tag administrative procedures.

In § 697.33, paragraphs (a) through (d), were combined and redesignated as § 697.19, paragraphs (a) and (b), text was added to specify that the date of implementation of the requirement to have a lobster management area designation certificate or a permit relating to area management designations on board all vessels with a limited access lobster permit fishing with traps is May 1, 2000, to allow adequate time for notification, mailing and return of permit holder area designation election forms prior to implementation of the requirement.

In § 697.33, paragraphs (a) through (d), consolidated and redesignated as § 697.19, paragraphs (a) and (b), were rewritten to postpone the trap tag requirement until May 1, 2000, following recommendations received by the Commission, several state agencies and numerous individuals.

In § 697.33, paragraph (e), requiring an on-shore trap count if requested by an authorized officer, was deleted as burdensome and ineffective for the intended purpose of ensuring compliance with the trap limit requirement.

In § 697.34, redesignated as § 697.19, paragraph (a) was removed because paragraph (a) described administrative procedures for a trap tag program as well as possible alternative state tagging programs. Administrative procedures are not appropriate for inclusion in the regulatory text describing management measures.

In § 697.34, paragraph (b) was redesignated as § 697.19(d) to consolidate and clarify both the trap limits and trap tag aspects of the management measures.

In § 697.34, paragraph (b)(2), redesignated as § 697.19(d)(2), the phrase ''within 24 hours'' was replaced by the phrase ''as soon as feasible within 7 days'' and the phrase ''on an official lobster trap tag replacement order form signed by the permit holder or authorized representative'' was replaced by ''by letter or fax to the Regional Administrator''. The notification requirement was modified and extended to allow a reasonable time period for lobstermen to notify NMFS concerning requests for replacement of lost tags.

In § 697.34, paragraph (c)(1) was redesignated as § 697.19(c) to consolidate the trap tag requirement to permanently attach a trap tag to any lobster trap in Federal waters beginning May 1, 2000, with other trap tag management measures.

In § 697.34, paragraphs (c)(2) through (c)(5) were redesignated as § 697.7, paragraphs (c)(1)(ix)(B) through (c)(1)(xiii)(E) to consolidate trap tag prohibitions for reader clarity.

Section 697.35 was redesignated as § 697.17 to consolidate non-trap lobster management measures under Subpart B—Management Measures rather than have management measures under both Subpart B and Subpart C.

In § 697.35, paragraph (a), redesignanted § 697.17, paragraph (a), the paragraph was modified to include the non-trap landing restriction found in § 697.7(d)(1)(iii) to add the more restrictive regulations which apply to the charter and head boats and commercial dive vessels which are restricted to six or fewer American lobsters per person on board the vessel and the lobsters are not intended to be, or are not, traded, bartered, or sold.

Section 697.24 ''Exempted waters for Maine State American lobster permits.'' was added. On October 11, 1996, the SFA was signed into law and amended, among other statutes, the ACFCMA (16 U.S.C. 5101 *et seq.*) to allow fishing for lobster by vessels issued Maine State American lobster permits in designated areas of the EEZ. These areas are often referred to as Maine pocket waters. The SFA provides that any person holding a valid permit issued by the State of Maine may engage in lobster fishing in these pocket waters, if such fishing is in accordance with all other applicable Federal and State regulations. The SFA specifications for these areas apparently included an unintentional line across land which is repeated in these regulations until further clarification is received from Congress. These pocket waters are small areas of the EEZ that lie between two areas of state waters, created by islands near the coast of Maine, and are described in § 697.24. This section, which contains existing lobster regulations currently in place was inadvertently omitted in the proposed rule.

Section 697.36 was redesignated § 697.25 in its entirety. As previously discussed, this change was made to consolidate lobster management measures under Subpart B—Management Measures, rather than have management measures under both Subpart B and Subpart C.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0202 for §§ 697.4 through 697.6

and § 697.12, OMB control number 0648–0309 for § 697.22, OMB control number 0648–0350 for § 697.8, and OMB control number 0648–0351 for § 697.21.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

Atlantic Coastal Fisheries Cooperative Management Act

Paragraphs (A) and (B) of section 804(b)(1) of the ACFCMA authorize the Secretary of Commerce to issue regulations in the EEZ that are compatible with the effective implementation of a coastal fishery management plan and consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act. This authority has been delegated to the Assistant Administrator for Fisheries, NOAA (AA). The AA has determined that these actions are compatible with the Commission's American Lobster Interstate Management Plan and consistent with the national standards of the Magnuson-Stevens Act. Federal action alone in the EEZ is not likely to stop overfishing, to rebuild lobster egg production, or to meet Federal management requirements to do so. Only cooperative state and Federal action will rebuild American lobster stocks.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866. Industry revenues were projected to increase $2.13 million annually. Projected over a 10 year period at a discount rate of 7.0 percent, the management measures in this rule would exceed the status quo (current management measures) by $16.09 million in present value. If states do not implement any fishing mortality rate reduction initiatives, the expected benefit of implementing the management measures in this rule in the EEZ only will be greatly diminished but is still positive. Specifically, an EEZ-only effort reduction program would result in an annual net gain of $0.18 million. Projected over 10 years at 7.0 percent, the present value of an EEZ-only effort reduction program would be $1.22 million. The cost for trap tags and tag replacement to the inshore and offshore sectors for complying with the final rule is estimated at $332,900 for the first year.

Executive Order 13132

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection-of-information requirements subject to the PRA. The following new collection-of-information requirements have been approved by OMB. The estimated time per individual response is shown.

1. Revision of existing gear (trap) marking requirements (1 minute) has been approved by OMB under control number 0648–0351;

2. Lobster management area designation, request for trap tags, and preparing payment for trap tags (5 minutes) has been approved by OMB under control number 0648–0202;

3. Reporting lost trap tags and requesting replacement trap tags (3 minutes) has been approved by OMB under control number 0648–0202;

4. Requests for additional trap tags (2 minutes) has been approved by OMB under control number 0648–0202; and

5. Extend sea sampler/observer coverage to include the American lobster fishery (2 minutes) has been approved by OMB under control number 0648–0202.

The following collection-of-information requirements are being restated and have been approved by OMB control number 0648–0202 with the response times per application as shown: vessel permit applications (30 minutes for a new application, 15 minutes for renewal applications), confirmations of permit history (30 minutes); operator permit applications (1 hour); and dealer permit applications (5 minutes).

The following collection-of-information requirement is being restated and has been approved by OMB under control number 0648–0350: vessel identification requirements, estimated at 45 minutes per vessel.

The following collection-of-information requirement is referred to and has been approved by OMB under control number 0648–0309: exempted fishing, estimated at one hour per vessel.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

Endangered Species Act and Marine Mammal Protection Act

A formal section 7 consultation under the Endangered Species Act was initiated for this rule in a biological opinion by NMFS dated December 17, 1998. After reviewing the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the action, and the cumulative effects, it is NMFS' Biological Opinion that the continued operation of the Federal lobster fishery, with modifications to reduce impacts of entanglement through the Atlantic Large Whale Take Reduction Plan, is not likely to jeopardize the continued existence of the northern right whale, humpback whale, fin whale, blue whale, sperm whale, sei whale, leatherback sea turtle, and loggerhead sea turtle. In addition, the changes are not likely to destroy or adversely modify right whale critical habitat.

Essential Fish Habitat

An Essential Fish Habitat (EFH) consultation was performed on this action. The management measures for the trap sector that could impact EFH for species managed under the MSA include: declaration of fishing area; trap limits; and the maximum trap size. The implementation of limits on the number and size of traps and areas fished by Federal permit holders should serve to reduce the effects of fishing on EFH. No new conservation recommendations were provided, since this action already minimizes impacts to EFH, to the extent practicable.

For the non-trap sector, the implementation of a landing limit of 100 lobsters (or parts thereof) per day, up to a maximum of 500 lobsters (or parts thereof) per trip of 5 days or longer, effectively limits landings by the non-trap sector to a bycatch fishery. A significant portion of lobster landed by non-trap lobster permit holders is landed by fishermen also holding permits for multispecies; sea scallop; squid, mackerel, butterfish; scup; black sea bass, and summer flounder fisheries. Impacts to habitat from each of these fisheries is managed according to the Magnuson-Stevens Act under the FMP for each fishery. The appropriate vehicle for fully analyzing these impacts is

through the FMPs for the directed fishery rather than the regulations for the lobster non-trap bycatch fishery, although it can be determined that these regulations may reduce the amount of time draggers will have contact with the benthic environment while fishing for lobsters.

National Environmental Policy Act

NMFS prepared a Draft Environmental Impact Statement and Regulatory Impact Review (DEIS/RIR) for this action; a notice of availability was published in the **Federal Register** on March 27, 1998 (63 FR 14922). Public comments on the DEIS/RIR were addressed, and NMFS prepared a Final Environmental Impact Statement and Regulatory Impact Review (FEIS/RIR) following publication of a proposed rule on lobster management in Federal waters on January 15, 1999 (64 FR 2708). A notice of availability for the FEIS/RIR was published in the **Federal Register** on May 28, 1999 (64 FR 29026). NMFS determined that implementation of this action is environmentally preferable to the status quo. The FEIS/RIR demonstrates that, notwithstanding potential, yet unknown, changes in fishing practices and behavior, this action contains management measures able to end overfishing and rebuild stocks of American lobster; protect marine mammals and sea turtles; and provide economic and social benefits to the lobster industry in the long term. The FEIS/RIR further emphasizes the importance of concurrent action by the states during the stock rebuilding period to the realization of these benefits.

Final Regulatory Flexibility Analysis

In compliance with the Regulatory Flexibility Act, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), supplemented by the preamble to the proposed rule (64 FR 2708), as well as by further analysis contained in the FEIS/RIR (64 FR 29026), that describes the impact this action may have on small entities. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses thereto, and the preamble to the proposed rule, the analysis of impacts and alternatives to this action, and the summary that follows.

Objectives

The objective of lobster management is to prevent overfishing of American lobster throughout the species' range and to rebuild lobster stocks to a level that will produce optimum yield. To accomplish this, NMFS must ensure that existing lobster conservation measures in federal waters are maintained and take further action in concert with actions by the States in coastal waters under their jurisdiction. As documented in Amendment 5 of the New England Fishery Management Council's American Lobster FMP (May 1994), the American lobster resource is considered recruitment overfished when, throughout its range, the fishing mortality rate (F), given the regulations in place at that time under the suite of regulatory management measures, results in a reduction in estimated egg production per recruit to 10 percent or less of a non-fished population.

Public Comment

Sixty-one public comments and responses are presented under Comments and Responses.

Estimate of Small Entities

Virtually all participants in the lobster fishery are considered to be small entities. Consequently, management measures, including all measures to mitigate impacts, affect small entities only, and all analyses of such effects are necessarily analyses of effects on small entities.

As of December, 1997, 3,153 vessel owners held Federal lobster permits. The majority of these are associated with smaller vessels and the bulk are identified with Maine or Massachusetts as the primary port of landing, followed distantly by Rhode Island, and then New Jersey, New York and New Hampshire. Of these 3,153 vessels, 1,962 also hold at least one other federal permit. As of December, 1997, there were a total of 2785 Federal permit holders fishing with traps to harvest lobsters. Although not always the case, it is generally recognized that vessels in excess of 50 feet are required to prosecute the offshore fishery. Based on this distinction, there were 297 trap vessels that may be involved in the offshore fishery and 2,488 trap vessels that may fish predominantly in the nearshore zones. An additional 802 non-trap vessels possessed American lobster permits.

Based on dealer reports, the total value of American lobster landed by Federal permit holders in 1997 was $23.97 million. This value represented 10.7 percent of the total value of American lobster ($223.7 million) landed in the Northeast region in 1997. Note that landings by Federal permit holders can come from a mixture of state waters, and nearshore/offshore EEZ areas. Revenues by Federal permit holders were divided among trap and trawl vessels, with trap vessels accounting for 90 percent of the revenues ($21.5 million). Among trap vessels in excess of 50 feet in overall length, American lobster landings were valued at $13.95 million in 1997.

A detailed description of the small businesses which may be impacted by Federal lobster management actions is available and contained in a FEIS/RIR prepared by NMFS for this rule (see **ADDRESSES**).

Recordkeeping and Reporting Requirements

Collection-of-information requirements are presented in this final rule in the Classification section under Paperwork Reduction Act. According to the data provided, there are a total of 2,785 Federal permit holders that use traps to harvest American lobster and will have to comply with both the trap tag and the area designation requirements of these regulations. The average number of traps fished by these vessels was 667 and 1,321 by nearshore and offshore vessels, respectively.

Since management alternatives differ between the non-trap (mobile gear) and trap (fixed gear) groups, the analysis was performed separately for each gear group.

The Trap Sector

The action for the trap sector initially cap and then will reduce fishing effort (gear in the water), in addition to other management measures. These measures apply to all participants in the trap sector.

Trap Caps, Trap Tags, and Maximum Carapace Size

Two measures that could directly affect revenues are the trap cap for both the nearshore and offshore EEZ and the maximum carapace in Area 1. There are a total of 2,785 Federal permit holders fishing with traps that will have to comply with both the trap regulations and the maximum carapace in Area 1. The average number of traps fished by these vessels was 667 and 1,321 by nearshore and offshore vessels, respectively. For an average nearshore zone vessel fishing 667 traps, trap tag regulations will require an annual increase in compliance costs of $247. For an average offshore vessel fishing 1,321 traps, the annual increase in compliance costs for trap tags will be $515.

The regulations prohibit the taking of lobsters in excess of the maximum size by anyone fishing with either trap or trawl gear in Area 1. The prohibition also applies to any trap vessel that selects Area 1 no matter where it fishes. Entities that currently fish in Area 1 will not be able to sell lobsters above the maximum carapace length and will lose

a portion of their revenues. Landings data by carapace length are not available to provide a quantitative estimate of these lost revenues. However, estimates of the size structure of female lobsters landed in the Gulf of Maine produced for the stock assessment for American lobster during June 1993 at the NMFS Northeast Region's Stock Assessment Workshop No. 16 indicate lobsters in excess of 128 mm (approximately 5″) comprised 0.06 percent of 1992 landings. Given this finding, the proportion of total revenues to Area 1 vessels comprised of lobsters in excess of the maximum size is not likely to be very high.

NMFS analysis indicates that approximately 30 percent of trap fishermen will have to reduce the numbers of traps fished. However, within certain limits, adjustments to days fished, trap hauls, crew, soak times, and trap configurations may be adopted to at least partially offset the loss in traps. These adaptive strategies, together with an anticipated reduction in fishing mortality rates, will likely result in an eventual increase in catch per unit effort (*i.e.,* catch per trap hauled). However, given the difference in timing between the trap reductions and the anticipated longer term increases in catch, it seems likely that a substantial number of individual entities will experience reductions in total revenues that exceed 5 percent for at least some portion of the stock rebuilding schedule. Even if vessels find ways of maintaining gross revenues, it will likely require substantial changes in the way in which they organize their business. Further, as described above, for at least some portion of fishermen operating in Area 1, additional revenues will be lost from the sale of lobsters in excess of the proposed maximum carapace length. Therefore, it appears likely that a substantial number of vessels will experience a reduction in revenues, and that trap reductions will likely require significant changes in business operations for a substantial number of entities.

Maximum Trap Size and Increased Escape Vent

In addition, it is likely that at least some portion of the trap fishery will bear compliance costs relating to maximum trap size, and increased escape vent size. These regulations impose a limit on trap size in terms of volume. The maximum size differs between offshore and nearshore fishing zones and affect all Federal permit holders that use trap gear. The maximum trap size is intended as a capping mechanism to prevent increased trapping efficiency by limiting expansion of trap sizes. No data is currently available to document the numbers of traps that are currently above the size cap in either nearshore or offshore areas. However, the size caps were determined through a series of Commission meetings with industry representatives and were set at or above known industry standards at the time. For this reason, the maximum trap size has been set to accommodate the majority of gear currently in use. For the worst case scenario, the average nearshore vessel fishing 667 traps have to replace every trap at a cost of $50 per trap for a total cost of $33,350. Similarly, the cost burden for an average offshore vessel will be $66,050 (1,321 traps at $50/trap). The regulations require installation of an escape vent that is 1/16th of an inch (0.159 cm) greater than what the regulations use to require. This regulation applies to all traps fished by Federal lobster permit holders. Evidence offered by Effort Management Team (EMTs) members during the development of Amendment 5 to the American lobster FMP indicates that at least some portion of the lobster industry is already using escape vents larger than old regulations use to require, and are in compliance with the new regulation. No data is currently available to document the actual number of escape panels that will be replaced. However, assuming a worst case scenario, replacement of escape vents cost an average nearshore vessel fishing 667 traps a total of $933. The cost to an average offshore vessel fishing 1,321 traps will be $1,848. These costs represent a one-time only increase in compliance costs since the new escape vents will be incorporated into traps through normal replacement and maintenance. Vessels that are currently using conforming escape vents will not have to bear these costs. The added costs of replacing escape vents may be partially offset with cost savings, as the time required to cull the catch will be reduced (the principal reason why many industry participants already are using escape vents larger than required by the old regulations).

Although it is likely that compliance costs for some vessels will increase by 5 percent or more compared to current compliance costs, the exact number of vessels that will be effected cannot be determined with the maximum trap size, trap tags requirements, and increased escape vents requirements. Some amount of cash outlay will be required to come into compliance. Under a worst case scenario, for an average vessel, the cumulative cost of replacing escape vents and purchasing trap tags is estimated to be $1,180 and $2,363 for nearshore and offshore vessels, respectively. Surveys of offshore and nearshore lobster vessels by the University of Rhode Island indicate that average annual operating costs for offshore vessels will be approximately $190,000 per year, exclusive of crew payments. Similarly, the estimated average operating costs for nearshore vessels are $24,000. As a proportion of operating costs, the estimated compliance costs (1.2 percent) for offshore vessels does not exceed NMFS threshold. The proportional increase (4.9 percent) in compliance costs for replacement of escape panels and trap tags by nearshore vessels does not approach the NMFS threshold for significance. Replacement of nonconforming traps represents a significantly larger increase in compliance costs, since new traps are estimated to cost $50 each. It is likely that at least some portion of small entities will bear compliance costs that will exceed the NMFS threshold of a 5 percent or greater increase in compliance costs. However, given available data, it is not possible to determine with reasonable certainty whether a substantial number of entities will be significantly impacted.

Vessels that are currently fishing a number of traps greater than the trap caps under this final rule will likely suffer greater short run revenue losses. If these same vessels also previously used traps in excess of the maximum trap size dimensions, the combined impacts of revenue losses and gear replacement cost (compliance costs) could likely put some of these vessels out of business. Unfortunately, while the possibility exists for these circumstances to occur, because of lack of data it is not possible to determine how many vessels will actually be affected.

Non-Trap Sector

Interim non-trap regulations on March 2, 1998 (63 FR 10154) become permanent this rulemaking. The non-trap regulations impose a possession limit of 100 lobsters (or parts thereof) per day up to a maximum of 500 lobsters (or parts thereof) per trip for vessels using mobile gear to harvest lobsters. The impact of this limit was evaluated by examining Northeast dealer data for the 1996 calendar year for all Federally permitted vessels using bottom trawl gear. Dealer data does not include landings on a count basis or vessel fishing time. To overcome this lack of information, two assumptions were required. First, it is assumed that

the average weight of a trawl-caught lobster is 1 lb (0.454 kg). A one pound lobster is approximately the weight of a lobster at its minimum legal size. Second, all landings are associated with one 24-hour period. These two assumptions are equivalent to a 100-pound (45.4 kg) possession limit for mobile gear fishing participants. Based on this analysis and the threshold of a 5 percent reduction in gross revenues, 48 (5.3 percent) trawl vessels will be impacted by more than a 5 percent reduction in revenues. By contrast, 76 percent of all trawl vessels included in the analysis will not be impacted at all because their documented landings did not exceed the possession limit on any trips taken during the 1996 calendar year. Based on these findings, the threshold of a 5 percent reduction in gross revenues for more than 20 percent of participants is not exceeded. The majority of vessels harvesting lobster by mobile gear in the EEZ do not rely on lobster as the principal source of annual income.

The ISFMP, through its area management approach, identifies and addresses socio-economic impacts among the industry sectors on an area-by-area basis. In the ISFMP, the management unit for American lobster (state and Federal waters from Maine to North Carolina) is subdivided into seven areas, and LCMTs were established for each of these areas. These LCMTs, comprised of lobster industry members, make recommendations for management measures to meet predefined targets designed to end overfishing. Industry recommended LCMT measures, implemented on an area by area basis after favorable review and by the Commission and NMFS, would mitigate adverse economic impacts to area participants by allowing for variable regulations by area, depending on the fishing practices and unique fishery characteristics for each management area. This approach, with industry participation, strives to alleviate adverse economic impacts to the extent possible.

NMFS regulations, under this action, do not identify ''default'' management measures (such as continued trap reductions) beyond the fishing year 2000. Instead, NMFS will evaluate the Commission's recommendations for resource-wide management of lobster in the EEZ, based upon the Commission's review and approval of conservation-equivalent proposals submitted by the LCMTs. On at least an annual basis, NMFS will identify, in consultation with the Commission and its LCMTs, these and/or additional measures in Federal waters to meet ISFMP objectives to end overfishing and to rebuild stocks of American lobster. If additional measures are necessary, NMFS will conduct a rulemaking action, including the appropriate biological and economic analyses.

Selection of Alternative

The DEIS/RIR analyzed six different alternatives for the lobster trap fishery and three alternatives for the non-trap (mobile gear) fishery. For the trap fishery, the six alternatives included: Taking no action (status quo); implementing measures in Federal waters recommended by the Commission; implementing additional nearshore/offshore trap limits with a buffer zone; implementing a four-tier nearshore/offshore trap limit; implementing nearshore fixed trap limits in combination with offshore limits based on historical participation; and prohibiting lobster fishing in Federal waters. The non-trap fishery alternatives included: A possession limit of 100 lobsters (or parts thereof) per day or a maximum of 500 per trip (no action/status quo); a possession limit of 500 per trip regardless of trip length, and a prohibition on the harvest and possession of American lobster in Federal waters. In addition, various alternatives were suggested by the commenters which were rejected for reasons given in the response to such sections.

Overall public comment during review of the DEIS/RIR indicated strong support for the plan embodied by the Commission's ISFMP (Alternative 2, for the lobster trap fishery and Alternative 1 for the non-trap fishery), and little support for other alternatives. Due to the preponderance of public comment for the alternatives noted here, NMFS continued development of those alternatives in the FEIS/RIR and in the proposed rule. See also Section III of the FEIS/RIR for rationale for the adoption of the subject action.

Trap Fishery

In this regulatory action, management of the American lobster trap fishery in the EEZ implements Alternative 2 identified in the DEIS: Implement ASMFC Interstate FMP Amendment 3 measures in Federal waters recommended by the Commission. The regulations implement a trap tag program and trap limits in Federal waters throughout the species' range. For nearshore management areas (Area 1, 2, 4, 5, 6, and the Outer Cape), fishermen are limited to a maximum of 1000 traps in 1999, and to a maximum of 800 traps in fishing year 2000. For the offshore fishery (Management Area 3), fishermen are limited to a maximum of 2000 traps in 1999, and to a maximum of 1800 traps in fishing year 2000. Additional new measures include: A prohibition on spearing lobster; adopting the lobster management areas specified in the Commission's ISFMP; a requirement that vessel owners who elect to use traps must inform NMFS each year of the lobster management areas in which they will set gear; a near-shore maximum trap size which, after a phase-in period will, beginning May 1, 2003, be in line with the Commission's Amendment 3 recommended size of 22,950 cubic inches (376,081 cubic centimeters); an off-shore maximum trap size which, after a phase in period will, beginning May 1, 2003, be in line with the Commission's Amendment 3 size of 30,100 cubic inches (493,249 cubic centimeters); increasing the minimum size of rectangular escape vents on lobster traps to not less than $1^{15}/_{16}$ inches ($^{4}/_{92}$ cm) by $5^{3}/_{4}$ inches (14.61 cm) or an increase in the minimum size of circular escape vents to two portals with unobstructed openings not less than $2^{7}/_{16}$ inches (6.19 cm) diameter; for Federal permit holders fishing in lobster management area 1, lobsters with a carapace size greater than 5 inches (12.7 cm) cannot be retained, or effective May 1, 2000, when the area designation requirement is implemented, lobsters with a carapace size greater than 5 inches (12.7 cm) cannot be retained by fishermen who elect Area 1 as one of their designated management areas; and a requirement, effective May 1, 2000, that each trap set by a Federal permit holder have a trap tag attached to the trap bridge or cental cross-member.

In addition, a continuation of existing measures include: Extending the moratorium on new entrants into the fishery; a prohibition on the possession of lobsters bearing eggs or from which eggs have been removed; a prohibition on the possession of lobster meat and detached tails, claws, or other parts; a prohibition on the possession of V-notched lobsters; a requirement to install a biodegradable ''ghost'' panel on traps; a minimum carapace size of $3^{1}/_{4}$ inches (8.26 cm); a requirement to install escape vents on traps; a prohibition on the possession at any time of more than six lobsters per person when aboard a head, charter, or dive vessel; a requirement that gear be marked in order to identify the permit holder; and a prohibition on the interstate or international trade of live whole lobsters smaller than the Federal minimum size.

1. Alternative 1—No Action/Status Quo

See Section III.2.A of the DEIS/RIR.

Taking no action would continue current regulations pertaining to harvest, possession, sale, purchase, or receipt of American lobster. No other management measures would be implemented for the trap fishery. Alternative 2, containing the measures implemented by this final rule, was selected and Alternative 1 was rejected since current fishing effort levels, if left unchecked under this alternative, would jeopardize the ability of the lobster population to sustain itself and would continue the danger of a possible stock collapse. Requirements for trap tags and tag replacement costs in Alternative 2, compared to alternative 1 (taking no action), will cost industry approximately $2,501,821 over 10 years. The estimated costs for administrating the trap tag program implemented by this final rule will be $94,506 for the first and subsequent years of the program. Enforcement costs will focus on verifying lobster management area designations and enforcing the trap tag requirement. Enforcement costs should stabilize unless future management measures include additional reductions in trap limits in future years. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

2. Alternative 3—Nearshore/Offshore Trap Limits With a Buffer Zone

See Section III.2.C of the DEIS/RIR.

Alternative 3 would implement a four-year annual reduction in the maximum number of lobster traps fished by, and would establish a 10 nm (18.52 km) buffer zone where no traps could be deployed, in an effort to separate the inshore and offshore EEZ fisheries for enforcement and conservation purposes. No positive comments were provided on this alternative at the 1998 public hearings. The 4-year reduction in trap limits was rejected as a ''default'' approach in favor of an allowance for primary consideration of conservation-equivalent measures to be identified by the LCMTs. The buffer zone concept also received little, if any, favorable public support, primarily since it was construed as an unfair restriction on the trap vs. non-trap lobster fishery. Requirements for trap tags and tag replacement costs in Alternative 2, measures implemented by this final rule, will cost industry approximately $2,501,821 over 10 years compared to this alternative 3, which would cost industry approximately $1,804,754 over 10 years, due to the trap reduction schedule in this alternative of 10 percent a year up to a 40 percent reduction in the total number of traps fished. The estimated costs for administrating the trap tag program implemented by the final rule will be $94,506 for the first and subsequent years of the program, while Alternative 3 would cost $94,506.00 for the first and second year. By year 3, the trap tag reduction schedule would impact traps in the water with a scheduled 10 percent reduction continuing until year five. Costs therefore in year three would be approximately $85,000, year four would be $75,600 and year five and thereafter would be $66,150. Enforcement costs under alternative 3 would focus on verifying lobster management area designations, enforcing the buffer zone prohibition and enforcing the trap tag requirement. Enforcement costs under alternative 3 would increase, compared to measures implemented under Alternative 2, since the additional 10 percent reductions in trap limits in Alternative 3 would require additional enforcement effort. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

3. Alternative 4—Four-tier Trap Reduction Strategy

See Section III.2.D of the DEIS/RIR.

This alternative compared to Alternative 3, would further limit trap allocations among Federal permit holders, based upon the number of traps actually fished in 1997. When compared to Alternative 2, Alternative 4 was rejected since further analysis and public comments indicates that this strategy is more germane to trap fisheries in certain state waters, and not germane to the EEZ fishery. Available data indicates that Federal permit holders tend to fish at or above the maximum trap limits proposed in Alternative 4.

Requirements for trap tags and tag replacement costs in this final rule will cost industry approximately $2,501,821 over 10 years, while costs in Alternative 4 would cost industry approximately $1,353,566 over 10 years. Under Alternative 4, the estimated costs for administrating the trap tag program would be approximately $70,880.00 for the first year and second year, $63,750 in year three, $56,700 for year four, and $49,600 for year five and thereafter verses $94,506 for the first and subsequent years of the program to be implemented by regulations in this rule. Under the final rule and under Alternative 4, enforcement costs will focus on verifying lobster management area designations and enforcing the trap tag requirement. Enforcement costs should stabilize unless future management measures include additional reductions in trap limits in future years. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

4. Alternative 5—Nearshore Fixed Trap Limits/Offshore Historical Participation

See Section III.2.E of the DEIS/RIR.

This alternative is similar to Alternative 3, but would allow higher trap allocations to Federal permit holders in the offshore vs nearshore EEZ fishery. This strategy for the offshore fishery is supported by the Area 3 LCMT, which has been evaluated by the Commission through public hearings. Issues concerning how this approach relates to fishing effort limitations and other elements of the other six lobster area management plans, have been contentious. Lobstermen often fish in more than one management area in both nearshore and offshore EEZ waters, and area plans under the ISFMP vary with respect to proposed regulatory measures such as lobster minimum size, historic participation, trap limits, and trap allocation procedures. The Commission has recently approved guidelines for historical participation in four of the seven lobster management areas (including Area 3), and has recommended that NMFS implement such measures in the EEZ portion of those areas. In follow-up to that recommendation, an Advance Notice of Proposed Rulemaking (ANPR) was published in the **Federal Register** on September 1, 1999 (64 FR 47756), to seek public comment on whether there is a need to restrict access of Federal permit holders to the lobster EEZ fishery on the basis of historical participation. Depending on this public response, continued Federal rulemaking, along with associated biological and economic analyses, may be initiated in the near future. Accordingly, Alternative 5 was rejected, but may be re-considered during future rulemaking, depending on public response to the ANPR.

Requirements for trap tags and tag replacement costs in this final rule will cost industry approximately $2,501,821 over 10 years, compared to Alternative 5 which will cost industry approximately $1,679,095 over 10 years. The estimated costs for administrating the trap tag program implemented by

this final rule will be $94,506 for the first and subsequent years of the program, while administrative costs under Alternative 5 would be $86,945.00 for the first and second year, approximately $78,200 in year three, $69,550 in year four, and in year five and thereafter costs would be approximately $60,850. Also, it should be noted that Alternative 5 would have an additional requirement to identify and verify the recent historical trap possession by about 200 offshore permitted vessels and allow the vessel owners to appeal to resolve trap tag allocation. The additional requirement would accrue an additional administrative task which is estimated to require a 0.5 staff year at the cost to the government of approximately $16,000.00 for the first year. Enforcement costs will focus on verifying lobster management area designations and enforcing the trap tag requirement. Enforcement costs should stabilize, unless future management measures include additional reductions in trap limits in future years. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

5. Alternative 6—Ban Fishing for and Possession of Lobster

See Section III.2.F of the DEIS/RIR.

Alternative 6 would require removal of all trap gear and closure of the EEZ to fishing for, and possession of lobster by any fishing vessel until lobster stocks recover throughout their range. This alternative was rejected when compared to Alternative 2, since it would have severe socio-economic impacts on Federal permit holders and would likely result in an adverse, substantial shift of fishing effort to other EEZ, as well as inshore fisheries.

Requirements for trap tags and tag replacement costs in this final rule will cost industry approximately $2,501,821 over 10 years compared to Alternative 6 which would close Federal waters and therefore have no tagging requirements or associated costs. However, based on exvessel value for 1997, the trap ban would result in revenue loss to Federal permit holders of $21.5 million in the first year. It is not known whether these vessels would be able to move into state waters or other fisheries to continue in business.

Compared to Alternative 6, the estimated costs for administrating the trap tag program implemented by this final rule will be $94,506 for the first and subsequent years of the program. Enforcement costs under Alternative 6 would provide the most cost savings of any alternative, since there would be no requirement to verify lobster management area designations or enforce a trap tag requirement. Enforcement activities under Alternative 6 would focus on compliance of the trap gear ban and lobster possession prohibitions from EEZ waters. (For a full description containing the details used in determining the economic costs, see the FEIS, Regulatory Impact Review under A—Costs to the Industry, B—Administrative Costs, and C—Enforcement costs and burden).

Non-Trap Fishery

NMFS will continue the regulations pertaining to the non-trap landing limits that are currently in place, implemented in Federal waters as an interim final regulation (63 FR 10154) March 2, 1998. It will be unlawful for a vessel that takes lobster by a method other than traps to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea, or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted.

1. Alternative 2—Limit Landings to 500 Lobster Per Day, Regardless of Trip Length

See Section III.3.B of the DEIS/RIR.

Alternative 2 was rejected in favor of Alternative 1, the status quo option because Alternative 1 will retain lobster landings by the non-trap fishery at historical levels, and prevent any potential expansion of harvest during the American lobster stock rebuilding period.

2. Alternative 3—Ban Fishing for and Possession of Lobster

See Section III.3.C of the DEIS/RIR.

This alternative was rejected in favor of Alternative 1, the status quo option, because Alternative 3 would have severe economic impacts on Federal permit holders and would likely result in an adverse, substantial shift of fishing effort to other EEZ, as well as inshore fisheries.

Although this rule does not modify existing regulations found at 50 CFR part 697 pertaining to weakfish, Atlantic striped bass, and Atlantic sturgeon, the entirety of part 697, as proposed, is repeated here.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 649 and 697

Fisheries, Fishing.

Dated: November 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.,* 15 CFR chapter IX and 50 CFR parts chapter VI, are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by:

A. Removing under 50 CFR the entries for §§ 649.4, 649.5, 649.6, 649.7 and 649.21; and

B. Adding under 50 CFR the following entries in numerical order.

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Number [1]
* * * * *	
50 CFR:	
* * * * *	
697.4(a), (d) and (e)	0648–0202
697.5	–0202
697.6	–0202
697.8	–0350
697.12	–0202
697.21	–0351
697.22	–0309

[1] Current OMB control number (all numbers begin with 0648—).

50 CFR CHAPTER VI

PART 649—AMERICAN LOBSTER FISHERY—[REMOVED]

3. Part 649 is removed.

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

4. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. Part 697 is revised to read as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—General Provisions

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

Subpart A—General Provisions

§ 697.1 Purpose and scope.

The regulations in this part are issued under the authority of section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*, and section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, 16 U.S.C. 1851 note, and govern fishing in the EEZ on the Atlantic Coast for species covered by those acts.

§ 697.2 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in §§ 600.10 and 648.2 of this chapter, for the purposes of this part, the following terms have the following meanings:

American lobster or lobster means *Homarus americanus.*

Approved TED means any approved TED as defined at § 217.12 of this title.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis* found in the waters of the Atlantic Ocean north of Key West, FL.

Atlantic sturgeon means members of stocks or populations of the species *Acipenser oxyrhynchus.*

Berried female means a female American lobster bearing eggs attached to the abdominal appendages.

Block Island Southeast Light means the aid to navigation light located at Southeast Point, Block Island, RI, and defined as follows: Located at 40°09.2′ N. lat., 71°33.1′ W. long; is 201 ft (61.3 m) above the water; and is shown from a brick octagonal tower 67 ft (20.4 m) high attached to a dwelling on the southeast point of Block Island, RI.

BRD means bycatch reduction device.

Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

Certified BRD means any BRD, as defined in part 622, Appendix D of this chapter: Specifications for Certified BRDs.

Charter or head boat means any vessel carrying fishing persons or parties for a per capita fee, for a charter fee, or any other type of fee.

Commercial dive vessel means any vessel carrying divers for a per capita fee, a charter fee, or any other type of fee.

Commercial purposes means for the purpose of selling, trading, transferring, or bartering all or part of the fish harvested.

Commission means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by Congress in Pub. L. 77–539 and Pub. L. 81–721.

Continuous transit means that a vessel does not have fishing gear in the water and remains continuously underway.

CPH means Confirmation of Permit History.

Crab trawl means any trawl net that is rigged for fishing and has a mesh size of 3.0 inches (7.62 cm), as measured between the centers of opposite knots when pulled taut.

Cull American lobster means a whole American lobster that is missing one or both claws.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), any species of fish, the harvest of which is managed by this part, from the owner or operator of a vessel issued a valid permit under this part, or any person who receives, for a commercial purpose (other than solely for transport on land), any species of fish managed under this part.

De minimis state means any state where the landings are so low that the Commission's Fisheries Management Board has exempted that state from some of its regulatory responsibilities under an Interstate Fishery Management Plan.

Egg Production Rebuilding Schedule means the schedule identified in section 2.5 of Amendment 3 to the Commission's ISFMP.

Escape vent means an opening in a lobster trap designed to allow lobster smaller than the legal minimum size to escape from the trap.

Fishing trip or trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing year means, for the American lobster fishery, from May 1 through April 30 of the following year.

Flynet means any trawl net, except shrimp trawl nets containing certified BRDs and approved TEDs, when required under § 227.72(e)(2) of this title, and except trawl nets that comply with the gear restrictions specified at § 648.104 of this chapter for the summer flounder fishery and contain an approved TED, when required under § 227.72 (e)(2) of this title.

Ghost panel means a panel, or other mechanism, designed to allow for the escapement of lobster after a period of time if the trap has been abandoned or lost.

ISFMP means the Commission's Interstate Fishery Management Plan for American Lobster, as amended.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Lobster day-at-sea with respect to the American lobster fishery means each 24-hour period of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess, or land, or fishes for, possesses, or lands American lobster.

Lobster permit means a Federal limited access American lobster permit.

Lobster trap trawl means 2 or more lobster traps, all attached to a single ground line.

Management area means each of the geographical areas identified in this part for management purposes under the lobster ISFMP.

Montauk light means the aid to navigation light located at Montauk Point, NY, and defined as follows: Located at 41°04.3′ N. lat., 71°51.5′ W. long.; is shown from an octagonal, pyramidal tower, 108 ft (32.9 m) high; and has a covered way to a dwelling.

Natural Atlantic sturgeon means any Atlantic sturgeon that is not the result of a commercial aquaculture operation, and includes any naturally occurring Atlantic sturgeon (those Atlantic sturgeon naturally spawned and grown

in rivers and ocean waters of the Atlantic Coast).

Parts thereof means any part of an American lobster. A part of a lobster counts as one lobster.

Point Judith Light means the aid to navigation light located at Point Judith, RI, and defined as follows: Located at 41°21.7′ N. lat., 71°28.9′ W. long.; is 65 ft (19.8 m) above the water; and is shown from an octagonal tower 51 ft (15.5 m) high.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and head boats and commercial dive vessels are not considered recreational fishing vessels.

Regional Administrator means the Regional Administrator, Northeast Region, NMFS, or a designee.

Retain means to fail to return any species specified under § 697.7 of this chapter to the sea immediately after the hook has been removed or after the species has otherwise been released from the capture gear.

Sea sampler/observer means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits.

Shrimp trawl net means any trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net, as defined in § 622.2 of this chapter, that is rigged for fishing and has a headrope length longer than 16 ft (4.9 m).

Stocked Atlantic sturgeon means any Atlantic sturgeon cultured in a hatchery that is placed in rivers and ocean waters of the Atlantic Coast to enhance the Atlantic sturgeon spawning stocks.

TED means Turtle Excluder Device, which is a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Trap means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobsters. Red crab fishing gear, fished deeper than 200 fathoms (365.8 m), is gear deemed not to be a trap for the purpose of this part, and is not subject to the provisions of this part.

V-notched American lobster means any female American lobster bearing a V-shaped notch in the flipper next to and to the right of the center flipper as viewed from the rear of the lobster (underside of the lobster down and tail toward the viewer), or any female American lobster that is mutilated in a manner that could hide or obliterate such a mark.

V-shaped notch means a straight-sided triangular cut, without setal hairs, at least ¼ inch (0.64 cm) in depth and tapering to a point.

Weakfish means members of the stock or population of the species *Cynoscion regalis,* found along the Atlantic Coast from southern Florida to Massachusetts Bay.

Whole American lobster means a lobster with an intact and measurable body (tail and carapace). An American lobster with an intact and measurable body that is missing one or both claws, i.e., a cull lobster, is considered to be a whole American lobster.

(b) [Reserved]

§ 697.3 Relation to other Federal and state laws.

(a) The provisions of sections 307 through 311 of the Magnuson-Stevens Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson-Stevens Act.

(b) The relation of this part to other laws is set forth in § 600.705 of this chapter.

(c) The regulations in this part do not preempt more restrictive state laws, or state enforcement of more restrictive state laws, with respect to weakfish fishing and American lobster fishing. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement or measure.

§ 697.4 Vessel permits and trap tags.

(a) *Limited access American lobster permit.* Any vessel of the United States that fishes for, possesses, or lands American lobster in or harvested from the EEZ must have been issued and carry on board a valid Federal limited access lobster permit. This requirement does not apply to: charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if such lobsters are not intended for, nor used, in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster.

(1) *Eligibility in 1999 and thereafter.* To be eligible for issuance or renewal of a Federal limited access lobster permit for fishing year 1999 and thereafter, a vessel must:

(i) Have been issued a Federal limited access lobster permit for the preceding fishing year by the last day of such fishing year unless a CPH has been issued as specified in paragraph (a)(5) of this section or unless otherwise authorized by the Regional Administrator;

(ii) Be replacing a vessel that was issued a Federal limited access lobster permit for the preceding year; or

(iii) Be replacing a vessel issued a CPH.

(2) *Qualification restriction.* Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a Federal limited access lobster permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Administrator will determine who is eligible for the permit or a CPH under paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history, and management area designation, when required of a vessel, is presumed to transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history, and management area designation, for the purposes of replacing the vessel.

(4) *Consolidation restriction.* Federal limited access American lobster permits, and any rights or privileges associated thereto, may not be combined or consolidated.

(5) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing

and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (o) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form means the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (c) of this section.

(6) *Restriction on permit splitting.* A Federal limited access lobster permit will not be issued to a vessel or its replacement, or remain valid, if the vessels' permit or fishing history has been used to qualify another vessel for another Federal fishery.

(7) *Management area designations for vessels fishing with traps.* (i) For fishing year 2000 and beyond, it is unlawful for vessels issued a limited access American lobster permit fishing with traps, to retain on board, land, or possess American lobster in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s).

(ii) For fishing year 2000 and beyond, each owner of a vessel which fishes with traps capable of catching American lobster, applying for a limited access American lobster permit must declare to NMFS in his/her application for a permit or permit renewal, in which management areas described in § 697.18 the vessel will fish.

(iii) A lobster management area designation certificate or limited access American lobster permit shall specify in which lobster management area or areas the vessel may fish.

(iv) Once a vessel has been issued a lobster management area designation certificate or limited access American lobster permit specifying the lobster EEZ management areas in which the vessel may fish, no changes to the EEZ management areas specified may be made for such vessel for the remainder of the fishing year unless such vessel becomes a replacement vessel for another qualified vessel.

(v) A vessel issued a lobster management area designation certificate or limited access American lobster permit specifying more than one EEZ management area must abide by the most restrictive management measures in effect for any one of the specified areas, regardless of the area being fished, for the entire fishing year.

(b) *Condition.* Vessel owners who apply for a Federal limited access American lobster permit under this section must agree, as a condition of the permit, that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(c) *Vessel permit application.* Applicants for a Federal limited access American lobster permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. To be complete, an application for a Federal limited access American lobster permit must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; lobster management area designation the vessel will fish in, as specified in § 697.18, if fishing with traps capable of catching American lobster; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having more than a 25 percent interest; and name and signature of the owner or the owner's authorized representative. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Administrator at least 30 days prior to the date on which the permit is needed by the applicant. The Regional Administrator shall notify the applicant of any deficiency in the application.

(d) *Trap tag application, lost and replacement tags.* (1) Beginning fishing year 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member.

(2) Trap tags shall be issued by the Regional Administrator, or, by state agencies, by agreement with the Regional Administrator, provided that such state tagging programs accurately identify the Federal limited access American lobster permit holder. NMFS will provide notice to American lobster permit holders as to the procedure for applying for trap tags and any required fees.

(3) Vessel owners or operators are required to report to the Regional Administrator lost, destroyed, and missing tags as soon as feasible within 7 days after the tags have been discovered lost, destroyed, or missing, by letter or fax to the Regional Administrator.

(4) Requests for replacement of lost tags in excess of the tag limit specified in § 697.19(c) must be submitted in writing to the Regional Administrator on an appropriate form obtained from the Regional Administrator and signed by the permit holder or authorized representative. The form and request for replacement tags will be reviewed by the Regional Administrator on a case-by-case basis and a decision will be reached on the number of replacement tags to be issued, if any. A check for the cost of the replacement tags must be received before tags will be re-issued.

(e) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit or trap tags required under this section. Fee amounts shall be calculated in accordance with the procedures of

the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. Fees may not exceed such costs and shall be specified with each application form. The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue a permit or tags, as applicable, within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received;

(ii) The application was not received by the Regional Administrator by any applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section or the number of tags requested exceeds the applicable tag limit specified in § 697.19(c);

(iv) The applicant has failed to meet any other application or tag requirements stated in this part.

(2) *Incomplete applications.* Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Administrator shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A permit expires annually upon the renewal date specified in the permit.

(h) *Duration.* A permit will continue in effect until the renewal date unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as specified in paragraph (k) of this section.

(i) *Reissuance.* A vessel permit may be reissued by the Regional Administrator when requested in writing by the owner or authorized representative, stating the need for reissuance, the name of the vessel, and the number of the permit requested to be reissued. An application for a reissued permit is not considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(j) *Transfer.* A permit issued under this part is not transferable or assignable. A permit will be valid only for the fishing vessel, owner and/or person for which it is issued.

(k) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Administrator. If the written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* A vessel permit must be carried, at all times, on board the vessel for which it is issued and shall be subject to inspection upon request by any authorized officer. Any permit issued under this part must be maintained in legible condition.

(n) *Sanctions.* Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

(o) *Abandonment or voluntary relinquishment of limited access American lobster permits.* Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years. If a vessel's Federal limited access American lobster permit or CPH is voluntarily relinquished to the Regional Administrator, or abandoned through failure to renew or otherwise, no Federal limited access American lobster permit or CPH may be reissued or renewed based on the qualifying vessel's history.

§ 697.5 Operator permits.

(a) *General.* Any operator of a vessel issued a Federal limited access American lobster permit under § 697.4(a), or any operator of a vessel of the United States that fishes for, possesses, or lands American lobsters, harvested in or from the EEZ must have been issued and carry on board a valid operator's permit issued under this section. This requirement does not apply to: Charter, head, and commercial dive vessels that possess six or fewer American lobsters per person aboard the vessel if said lobsters are not intended for nor used in trade, barter or sale; recreational fishing vessels; and vessels that fish exclusively in state waters for American lobster.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Administrator. To be complete, an application must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two recent (no more than 1 year old) color passport-size photographs. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree, as a condition of this permit, that the operator and vessels fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 697.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in off loading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement or measure.

(d) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and shall be specified with each application form.

The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue an operator's permit within 30 days of receipt of the application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the application fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit expires upon the renewal date specified in the permit.

(g) *Duration.* An operator permit is valid until it is revoked, suspended, or modified under subpart D of 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Administrator as specified in paragraph (j) of this section.

(h) *Reissuance.* An operator permit may be reissued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the number of the permit requested to be reissued. An applicant for a reissued operator permit must also provide two recent (no more than 1 year old) color passport-size photos of the applicant. An application for a reissued permit is not considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(j) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Administrator within 15 days of the change in information. If written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

(n) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 697.6 Dealer permits.

(a) Any person who receives, for a commercial purpose (other than solely for transport on land), American lobster from the owner or operator of a vessel issued a valid permit under this part, or any person who receives, for a commercial purpose (other than solely for transport on land), American lobster, managed by this part, must have been issued, and have in his/her possession, a valid permit issued under this section.

(b) *Dealer application.* Applicants for a dealer permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Administrator. To be complete, an application must contain at least the following information, and any other information specified on the application form or otherwise required by the Regional Administrator: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares, must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one partner, names of all partners having more than a 25 percent interest; and name and signature of all partner or partners authorized must be included with the application. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days prior to the date on which the applicant needs the permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(c) *Fees.* The Regional Administrator may charge a fee to recover the administrative expenses of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and shall be specified with each application form. The applicable fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(d) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit at any time during the fishing year to an applicant, unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(e) *Expiration.* A permit expires upon the renewal date specified in the permit.

(f) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as required by paragraph (i) of this section.

(g) *Reissuance.* A dealer permit may be reissued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the number of the permit requested to be reissued. An application for a reissued permit is not considered a new application. An appropriate fee may be charged.

(h) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person, or other business entity, to which it is issued.

(i) *Change in application information.* Notice of a change in the dealers name, address, or telephone number must be submitted in writing to, and received by, the Regional Administrator within 15 days of the change in information. If written notice of the change in information is not received by the

Regional Administrator within 15 days, the permit is void.

(j) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(k) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(l) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit under this part must comply with the more restrictive requirement.

(m) *Sanctions.* Permits issued or sought under this section may be suspended, revoked, or modified, by procedures governing enforcement-related permit sanctions and denials, found at subpart D of 15 CFR part 904.

§ 697.7 Prohibitions.

(a) *Atlantic Coast weakfish fishery.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for, harvest, or possess any weakfish less than 12 inches (30.5 cm) in total length (measured as a straight line along the bottom of the fish from the tip of the lower jaw with the mouth closed to the end of the lower tip of the tail) from the EEZ.

(2) Retain any weakfish less than 12 inches (30.5 cm) in total length taken in or from the EEZ.

(3) Fish for weakfish in the EEZ with a minimum mesh size less than 3¼-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3¾-inch (9.5 cm) diamond stretch mesh for trawls and 2⅞-inch (7.3 cm) stretch mesh for gillnets.

(4) Possess more than 150 lb (67 kg) of weakfish during any one day or trip, whichever is longer, in the EEZ when using a mesh size less than 3¼-inch (8.3 cm) square stretch mesh (as measured between the centers of opposite knots when stretched taut) or 3¾-inch (9.5 cm) diamond stretch mesh for finfish trawls and 2⅞-inch (7.3 cm) stretch mesh for gillnets.

(5) Fish using a flynet in the EEZ off North Carolina in the area bounded as follows:

(i) On the north by a straight line connecting points 35°10.8′ N. lat., 75°29.2′ W. long. (3 nm off Cape Hatteras) and 35°03.5′ N. lat., 75°11.8′ W. long. (20 nm off Cape Hatteras).

(ii) The east by a straight line connecting points 35°03.5′ N. lat., 75°11.8′ W. long. (20 nm off Cape Hatteras) and 33°21.1′ N. lat., 77°57.5′ W. long., (about 30 nm off Cape Fear on the extension of the North Carolina/South Carolina state line into the EEZ).

(iii) On the south by a straight line connecting points 33°21.1′ N. lat., 77°57.5′ W. long., and 33°48.8′ N. lat., 78°29.7′ W. long. (3 nm off Little River Inlet on the North Carolina/South Carolina state line).

(iv) On the west by state waters.

(6) Possess any weakfish in the closed area of the EEZ, as described in paragraph (a)(5) of this section, when fishing with shrimp trawls or crab trawls.

(7) Land weakfish for commercial purposes caught in the EEZ in any state other than Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina.

(b) *Atlantic striped bass fishery.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for Atlantic striped bass in the EEZ.

(2) Harvest any Atlantic striped bass from the EEZ.

(3) Possess any Atlantic striped bass in or from the EEZ, except in the following area: The EEZ within Block Island Sound, north of a line connecting Montauk Light, Montauk Point, NY, and Block Island Southeast Light, Block Island, RI; and west of a line connecting Point Judith Light, Point Judith, RI, and Block Island Southeast Light, Block Island, RI. Within this area, possession of Atlantic striped bass is permitted, provided no fishing takes place from the vessel while in the EEZ and the vessel is in continuous transit.

(4) Retain any Atlantic striped bass taken in or from the EEZ.

(c) *American lobster.* (1) In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 to do any of the following:

(i) Retain on board, land, or possess at or after landing, whole American lobsters that fail to meet the minimum carapace length standard specified in § 697.20(b). All American lobsters will be subject to inspection and enforcement action, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

(ii) Retain on board, land, or possess, up to the time when a dealer first receives or possesses American lobster for a commercial purpose, any American lobster or parts thereof in violation of the mutilation standards specified in § 697.20(c).

(iii) Retain on board, land, or possess any berried female American lobster specified in § 697.20(d).

(iv) Remove eggs from any berried female American lobster, land, or possess any such lobster from which eggs have been removed. No person owning or operating a vessel issued a Federal limited access American lobster permit under § 697.4 or a vessel or person holding a State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 697.24 may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

(v) Retain on board, land, or possess any V-notched female American lobster.

(vi) Spear any American lobster, or land or possess any American lobster which has been speared.

(vii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel trap gear in excess of the trap limits specified in § 697.19.

(viii) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not identified, vented, paneled, and of a volume larger than specified in accordance with the requirements in § 697.21, unless such gear has been rendered unfishable.

(ix) Beginning May 1, 2000, possess, deploy, haul, harvest lobster from, or carry aboard a vessel any trap gear not tagged in accordance with the requirements in § 697.19, unless such gear has been rendered unfishable.

(x) Beginning May 1, 2000, fail to produce, or cause to be produced, lobster trap tags when requested by an authorized officer.

(xi) Beginning May 1, 2000, reproduce, or cause to be reproduced, lobster trap tags without the written consent of the Regional Administrator.

(xii) Beginning May 1, 2000, possess a lobster trap tag, tag a lobster trap with, or use, a lobster trap tag that has been reported lost, missing, destroyed, or issued to another vessel.

(xiii) Beginning May 1, 2000, sell, transfer, or give away lobster trap tags that have been reported lost, missing, destroyed, or issued to another vessel.

(xiv) Fail to affix and maintain permanent markings, as required by § 697.8.

(xv) Fish for, retain on board, land, or possess American lobsters, unless the operator of the vessel has been issued an

operator's permit under § 697.5, and the permit is on board the vessel and is valid.

(xvi) Fail to report to the Regional Administrator within 15 days any change in the information contained in the permit application as required under § 697.4(k) or § 697.5(j).

(xvii) Make any false statement in connection with an application under § 697.4, § 697.5, or § 697.6.

(xviii) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any American lobsters, unless the dealer has a valid Federal Dealer's Permit issued under § 697.6.

(xix) Refuse or fail to carry a sea sampler/observer if requested to do so by the Regional Administrator.

(xx) Fail to provide a sea sampler/observer with required food, accommodations, access, and assistance, as specified in § 697.12.

(xxi) Violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xxii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ from a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps.

(xxiii) Fish for, take, catch, or harvest lobster on a fishing trip in or from the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xxiv) Possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xxv) Transfer or attempt to transfer American lobster from one vessel to another vessel.

(xxvi) Beginning May 1, 2000, possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear in or from the management areas specified in § 697.18, unless such fishing vessel has been issued a valid management area designation certificate or valid limited access American lobster permit specifying such management area(s) as required under § 697.4(a)(7).

(2) In addition to the prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraph (c)(1) of this section, it is unlawful for any person to do any of the following:

(i) Retain on board, land, or possess American lobsters unless:

(A) The American lobsters were harvested by a vessel that has been issued and carries on board a valid Federal limited access American lobster permit under § 697.4; or

(B) The American lobsters were harvested by a vessel without a valid Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters; or

(C) The American lobsters were harvested by a charter boat, head boat, or commercial dive vessel that possesses six or fewer American lobsters per person on board the vessel and the lobsters are not intended to be, or are not, traded, bartered, or sold; or

(D) The American lobsters were harvested by a recreational fishing vessel; or

(E) The American lobsters were harvested by a vessel or person holding a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in § 697.24.

(ii) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any American lobsters from a vessel, unless the vessel has been issued a valid Federal limited access American lobster permit under § 697.4, or the American lobsters were harvested by a vessel without a valid Federal limited access American lobster permit that fishes for American lobsters exclusively in state waters or unless the vessel or person holds a valid State of Maine American lobster permit or license and that is fishing under the provisions of and in the areas designated in § 697.24.

(iii) To be, or act as, an operator of a vessel fishing for or possessing American lobsters in or from the EEZ, or issued a Federal limited access American lobster permit under § 697.4, without having been issued and possessing a valid operator's permit under § 697.5.

(iv) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, American lobsters taken from or harvested by a fishing vessel issued a Federal limited access American lobster permit, unless in possession of a valid dealer's permit issued under § 697.6.

(v) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, American lobsters caught by a vessel other than one issued a valid Federal limited access American lobster permit under § 697.4, or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in § 697.24, unless the American lobsters were harvested by a vessel without a Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters.

(vi) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved sea sampler/observer aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties.

(vii) Refuse to carry a sea sampler/observer if requested to do so by the Regional Administrator.

(viii) Refuse reasonable assistance to either a NMFS-approved sea sampler/observer conducting his or her duties aboard a vessel.

(ix) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any American lobster.

(x) Violate any provision of this part, the ACFCMA, the Magnuson-Stevens Act, or any regulation, permit, or notification issued under the ACFCMA, the Magnuson-Stevens Act, or these regulations.

(xi) Retain on board, land, or possess any American lobsters harvested in or from the EEZ in violation of § 697.20.

(xii) Ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster in violation of § 697.20.

(xiii) Fish, or be in the areas described in § 697.23(b)(2), (c)(2), (d)(2), and (e)(2) on a fishing vessel with mobile gear during the time periods specified in § 697.23(b)(1), (c)(1), (d)(1), and (e)(1), except as provided in § 697.23(b)(1), (c)(1), (d)(1), and (e)(1).

(xiv) Fish, or be in the areas described in § 697.23(b)(2), (c)(2), and (d)(2) on a fishing vessel with lobster trap gear on

board during the time periods specified in § 697.23(b)(1), (c)(1), and (d)(1).

(xv) Deploy or fail to remove lobster trap gear in the areas described in § 697.23(b)(2), (c)(2), and (d)(2) during the time periods specified in § 697.23(b)(1), (c)(1), and (d)(1).

(xvi) Violate any terms of a letter authorizing exempted fishing pursuant to § 697.22 or to fail to keep such letter aboard the vessel during the time period of the exempted fishing.

(xvii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any trap gear on a fishing trip in the EEZ on a vessel that fishes for, takes, catches, or harvests lobster by a method other than traps.

(xviii) Fish for, take, catch, or harvest lobster on a fishing trip in the EEZ by a method other than traps, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xix) Possess, retain on board, or land lobster by a vessel with any non-trap gear on board capable of catching lobsters, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(xx) Transfer or attempt to transfer American lobster from one vessel to another vessel.

(3) *Presumptions.* (i) Any person possessing, or landing American lobsters or parts thereof at or prior to the time when those American lobsters are landed, or are received or possessed by a dealer for the first time, is subject to all of the prohibitions specified in paragraph (c) of this section, unless the American lobsters were harvested by a vessel without a Federal limited access American lobster permit and that fishes for American lobsters exclusively in state waters; or are from a charter, head, or commercial dive vessel that possesses or possessed six or fewer American lobsters per person aboard the vessel and the lobsters are not intended for sale, trade, or barter; or are from a recreational fishing vessel.

(ii) American lobsters or parts thereof that are possessed, or landed at or prior to the time when the American lobsters are received by a dealer, or whole American lobsters that are possessed by a dealer, are presumed to have been harvested from the EEZ or by a vessel with a Federal limited access American lobster permit. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel without a Federal limited access American lobster permit and fishing exclusively for American lobsters in state or foreign waters will be sufficient to rebut this presumption.

(iii) The possession of egg-bearing female American lobsters, V-notched female American lobsters, American lobsters that are smaller than the minimum size set forth in § 697.20(b), or lobster parts, possessed at or prior to the time when the aforementioned lobsters or parts are received by a dealer, will be *prima facie* evidence that such American lobsters or parts were taken or imported in violation of these regulations. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

(d) *Atlantic sturgeon fishery.* In addition to the prohibitions set forth in § 600.725, it is unlawful for any person to do any of the following:

(1) Fish for Atlantic sturgeon in the EEZ.

(2) Harvest any Atlantic sturgeon from the EEZ.

(3) Possess any natural or stocked Atlantic sturgeon in or from the EEZ.

(4) Retain any Atlantic sturgeon taken in or from the EEZ.

(5) Possess any natural Atlantic sturgeon parts, including Atlantic sturgeon eggs, in the EEZ.

§ 697.8 Vessel identification.

(a) *Vessel name and official number.* Each fishing vessel issued a limited access American lobster permit and over 25 ft (7.6 m) in registered length must:

(1) Have affixed permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(2) Have its official number displayed on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals.* Except as provided in paragraph (d) of this section, each fishing vessel issued a limited access American lobster permit must display its official number in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner.* The owner of each vessel issued a limited access American lobster permit shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(d) *Non-permanent marking.* Vessels over 25 ft (7.6 m) in registered length, fishing in the EEZ and carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the aforementioned requirements.

§ 697.9 Facilitation of enforcement.

(a) *General.* See § 600.504 of this chapter.

(b) *Radio hails.* Permit holders, while underway, must be alert for communication conveying enforcement instructions and immediately answer via VHF–FM radio, channel 16, when hailed by an enforcement officer. Vessels not required to have VHF–FM radios by the Coast Guard are exempt from this requirement.

§ 697.10 Penalties.

See § 600.735 of this chapter.

§ 697.11 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, permit sanctions, seizures, and forfeitures under the Atlantic Striped Bass Conservation Act and the ACFCMA, and to the regulations of this part.

§ 697.12 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel issued a Federal limited access American lobster permit to carry a NMFS-approved sea sampler/observer. If requested by the Regional Administrator to carry a sea sampler/observer, a vessel may not engage in any fishing operations in the respective fishery unless a sea sampler/observer is on board, or unless the requirement is

waived, as specified in paragraph (c) of this section.

(b) If requested in writing by the Regional Administrator to carry an sea sampler/observer, it is the responsibility of the vessel owner to arrange for and facilitate sea sampler/observer placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Administrator, as specified by the Regional Administrator, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in election letters to vessel owners.

(c) The Regional Administrator may waive in writing the requirement to carry a sea sampler/observer if the facilities on a vessel for housing the sea sampler/observer, or for carrying out sea sampler/observer functions, are so inadequate or unsafe that the health or safety of the sea sampler/observer, or the safe operation of the vessel, would be jeopardized.

(d) An owner or operator of a vessel on which a NMFS-approved sea sampler/observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the sea sampler's/observer's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the sea sampler/observer, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Administrator, ensuring that transfers of sea samplers/observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/observers involved.

(6) Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the sea sampler/observer to inspect and copy the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a vessel issued a Federal limited access American lobster permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, or other specimens taken by the vessel.

(f) NMFS may accept sea sampler/observer coverage funded by outside sources if:

(1) All coverage conducted by such sea samplers/observers is determined by NMFS to be in compliance with NMFS' sea sampler/observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The sea sampler/observer is approved by the Regional Administrator.

Subpart B—Management Measures

§ 697.17 Non-trap harvest restrictions.

(a) *Non-trap landing limits.* In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for a vessel with any non-trap gear on board capable of catching lobsters, or, that fishes for, takes, catches, or harvests lobster on a fishing trip in or from the EEZ by a method other than traps, to possess, retain on board, or land, in excess of 100 lobsters (or parts thereof), for each lobster day-at-sea or part of a lobster day-at-sea, up to a maximum of 500 lobsters (or parts thereof) for any one trip, unless otherwise restricted by § 648.80(a)(3)(i), (a)(4)(i)(A), (a)(8)(i), (a)(9)(i)(D), (a)(12)(i)(A), (a)(13)(i)(A), (b)(3)(ii) or § 697.7(c)(2)(i)(C) of this chapter.

(b) All persons that fish for, take, catch, or harvest lobsters on a fishing trip in or from the EEZ are prohibited from transferring or attempting to transfer American lobster from one vessel to another vessel.

(c) Any vessel on a fishing trip in the EEZ that fishes for, takes, catches, or harvests lobster by a method other than traps may not possess on board, deploy, fish with, or haul back traps.

§ 697.18 Lobster management areas.

The following lobster management areas are established for purposes of implementing the management measures specified in this part. (A copy of a chart showing the American lobster EEZ management areas is available upon request to the Office of the Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.)

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are near-shore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point on Cape Cod:

Point	Latitude	Longitude
A	43°58′ N.	67°22′ W.
B	43°41′ N.	68°00′ W.
C	43°12′ N.	69°00′ W.
D	42°49′ N.	69°40′ W.
E	42°15.5′ N.	69°40′ W.
G	42°05.5′ N.	70°14′ W.
G1	42°04.25′ N.	70°17.22′ W.
G2	42°02.84′ N.	70°16.1′ W.
G3	42°03.35′ N.	70°14.2′ W.

Along the coastline of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to point A.

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are near-shore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
H	41°40′ N.	70°00′ W.
I	41°15′ N.	70°00′ W.
J	41°21.5′ N.	69°16′ W.
K	41°10′ N.	69°06.5′ W.
L	40°55′ N.	68°54′ W.
M	40°27.5′ N.	72°14′ W.
N	40°45.5′ N.	71°34′ W.
O	41°07′ N.	71°43′ W.
P	41°06.5′ N.	71°47′ W.
Q	41°11′30″ N.	71°47′15″ W.
R	41°18′30″ N.	71°54′30″ W.

From point ''R'' along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point ''H'' along the Rhode Island and Massachusetts coast.

(c) *Area 2/3 Overlap.* The Area 2/3 Overlap is defined by the area, comprised entirely of Federal waters, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
K	41°10′ N.	69°06.5′ W.
L	40°55′ N.	68°54′ W.
M	40°27.5′ N.	72°14′ W.
N	40°45.5′ N.	71°34′ W.

(d) *EEZ Offshore Management Area 3.* EEZ Offshore Management Area 3 is defined by the area, comprised entirely

of Federal waters, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
A	43°58′ N.	67°22′ W.
B	43°41′ N.	68°00′ W.
C	43°12′ N.	69°00′ W.
D	42°49′ N.	69°40′ W.
E	42°15.5′ N.	69°40′ W.
F	42°10′ N.	69°56′ W.
K	41°10′ N.	69°06.5′ W.
N	40°45.5′ N.	71°34′ W.
M	40°27.5′ N.	72°14′ W.
U	40°12.5′ N.	72°48.5′ W.
V	39°50′ N.	73°01′ W.
X	38°39.5′ N.	73°40′ W.
Y	38°12′ N.	73°55′ W.
Z	37°12′ N.	74°44′ W.
ZA	35°34′ N.	74°51′ W.
ZB	35°14.5′ N.	75°31′ W.
ZC	35°14.5′ N.	71°24′ W.
From point ''ZC'' along the seaward EEZ boundary to point ''A''.		

(e) *EEZ Nearshore Management Area 4.* EEZ Nearshore Management Area 4 is defined by the area, including state and Federal waters that are near-shore in the northern Mid-Atlantic, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
M	40°27.5′ N.	72°14′ W.
N	40°45.5′ N.	71°34′ W.
O	41°07′ N.	71°43′ W.
P	41°06.5′ N.	71°47′ W.
S	40°58′ N.	72°00′ W.
T	41°00.5′ N.	72°00′ W.
From Point ''T'', along the New York/New Jersey coast to Point ''W''		
W	39°50′ N.	74°09′ W.
V	39°50′ N.	73°01′ W.
U	40°12.5′ N.	72°48.5′ W.
From Point ''U'' back to Point ''M''.		

(f) *EEZ Nearshore Management Area 5.* EEZ Nearshore Management Area 5 is defined by the area, including state and Federal waters that are near-shore in the southern Mid-Atlantic, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
W	39°50′ N.	74°09′ W.
V	39°50′ N.	73°01′ W.
X	38°39.5′ N.	73°40′ W.
Y	38°12′ N.	73°55′ W.
Z	37°12′ N.	74°44′ W.
ZA	35°34′ N.	74°51′ W.
ZB	35°14.5′ N.	75°31′ W.
From Point ''ZB'' along the coasts of North Carolina, Virginia, Maryland, Delaware, New Jersey back to Point ''W''.		

(g) *Nearshore Management Area 6.* The Nearshore Management Area 6 is defined by the area, including New York and Connecticut state waters, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
T	41°00.5′ N.	72°00′ W.
S	40°58′ N.	72°00′ W.
From Point ''S'', boundary follows the 3 mile limit of New York as it curves around Montauk Point to Point ''P''		
P	41°06.5′ N.	71°47′ W.
Q	41°11′30″ N.	71°47′15″ W.
R	41°18′30″ N.	71°54′30″ W.
From point ''R'', along the maritime boundary between Connecticut and Rhode Island to the coast; then west along the coast of Connecticut to the western entrance of Long Island Sound; then east along the New York coast of Long Island Sound and back to Point ''T''.		

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

Point	Latitude	Longitude
F	42°10′ N.	69°56′ W.
G	42°05.5′ N.	70°14′ W.
G1	42°04.25′ N.	70°17.22′ W.
G2	42°02.84′ N.	70°16.1′ W.
G3	42°03.35′ N.	70°14.2′ W.
From Point G3 along the outer Cape Cod coast to Point H		
H	41°40′ N.	70°00′ W.
I	41°15′ N.	70°00′ W.
J	41°21.5′ N.	69°16′ W.
From Point ''J'' back to Point ''F''.		

(i) NMFS may, consistent with § 697.25, implement management measures necessary for each management area, in order to end overfishing and rebuild stocks of American lobster.

§ 697.19 Trap limits and trap tag requirements for vessels fishing with traps.

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Beginning January 5, 2000, through April 30, 2000, vessels fishing in any EEZ management area except EEZ Offshore Management Area 3, shall not fish with, deploy in, possess in, or haul back from such area more than 1,000 traps.

(2) Beginning May 1, 2000, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying the EEZ Nearshore Management Area(s) and the Area 2/3 Overlap, or, only the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 traps.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Beginning January 5, 2000, through April 30, 2000, vessels fishing only EEZ Offshore Management Area 3, or, fishing only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 2,000 traps.

(2) Beginning May 1, 2000, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 1,800 traps.

(c) *Trap tag requirements for vessels fishing with traps.* Beginning May 1, 2000, any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member.

(d) In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

§ 697.20 Size, harvesting and landing requirements.

(a) *Condition.* By being issued a Federal limited access American lobster permit, the vessel owner is subject to all measures in this subpart, unless otherwise specified, regardless of where American lobsters were harvested.

(b) *Carapace length.* (1) The minimum carapace length for all American lobsters harvested in or from the EEZ is 3¼ inches (8.26 cm).

(2) The minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit, is 3¼ inches (8.26 cm).

(3) The maximum carapace length for all American lobster harvested in or from EEZ Nearshore Management Area 1, as defined in § 697.18(a)(1), is 5 inches (12.7 cm). Any vessel fishing in or permitted to fish in EEZ Nearshore Management Area 1 must comply with the 5 inch (12.7 cm) maximum carapace length requirement regardless of where the lobsters are harvested.

(4) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in paragraph (b) in this section.

(c) *Mutilation.* (1) Subject to the rebuttable presumption in § 697.7(c)(3), no person may remove meat or any body appendage from any American lobster harvested in or from the EEZ before, or at the time of landing, or have in possession any American lobster part other than whole lobsters, up to the time when a dealer first receives or possesses American lobster.

(2) Subject to the rebuttable presumption in § 697.7(c)(3), no owner, operator or person aboard a vessel issued a Federal American lobster permit may remove meat or any body appendage from any American lobster before or at the time of landing, or have in possession any American lobster part other than whole lobsters, up to the time when a dealer first receives or possesses American lobster.

(d) *Berried females.* (1) Any berried female harvested in or from the EEZ must be returned to the sea immediately.

(2) Any berried female harvested or possessed by a vessel issued a Federal limited access American lobster permit must be returned to the sea immediately.

(3) No vessel, or owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may possess any berried female.

(4) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female as specified in paragraph (d) of this section.

(e) *Removal of eggs.* (1) No person may remove, including, but not limited to, the forcible removal and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female American lobster.

(2) No owner, operator or person aboard a vessel issued a Federal limited access American lobster permit may remove, including but not limited to, the forcible removal, and removal by chemicals or other substances or liquids, extruded eggs attached to the abdominal appendages from any female American lobster.

(3) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that bears evidence of the removal of extruded eggs from its abdominal appendages as specified in paragraph (e) of this section.

(f) *Spearing.* (1) No person may spear any American lobster in the EEZ.

(2) No person on a vessel issued a Federal lobster license may spear a lobster.

(3) No person may harvest or possess any American lobster which has been speared in the EEZ.

(4) No person may possess, ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any American lobster which has been speared.

§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.

(a) *Gear identification and marking.* All lobster gear deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit, and not permanently attached to the vessel must be legibly and indelibly marked with the following:

(1) *Identification.* Effective through April 30, 2000, all lobster gear must be marked with the following code of identification:

(i) A number assigned by the Regional Administrator; or

(ii) Whatever positive identification marking is required by the vessel's home-port state.

(2) *Identification and trap tagging.* Beginning May 1, 2000, lobster gear must be marked with a trap tag (as specified in § 697.19) with the following code of identification:

(i) A number assigned by the Regional Administrator; or

(ii) Whatever positive identification marking is required by the vessel's home-port state.

(b) *Deployment and gear configuration.* In the areas of the EEZ described in paragraph (b)(4) of this section, lobster trap trawls are to be displayed and configured as follows:

(1) Lobster trap trawls of three or fewer traps deployed in the EEZ must be attached to and marked with a single buoy.

(2) Lobster trap trawls consisting of more than three traps must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west, to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east, to and including south) of an American lobster trap trawl must be configured with a radar reflector only. Standard tetrahedral corner radar reflectors of at least 8 inches (20.32 cm) (both in height and width, and made from metal) must be employed. (A copy of a diagram showing a standard tetrahedral corner radar reflector is available upon request to the Office of the Regional Administrator.)

(3) No American lobster trap trawl shall exceed 1.5 nautical miles (2.78 km) in length, as measured from radar reflector to radar reflector.

(4) Gear deployment and configuration requirements specified in paragraphs (b)(1) through (b)(3) of this section apply in the following areas:

(i) *Gulf of Maine gear area.* Gulf of Maine gear area is defined as all waters of the EEZ north of 42°20′ N. lat. seaward of a line drawn 12 nautical miles (22.2 km) from the baseline of the territorial sea;

(ii) *Georges Bank gear area.* Georges Bank gear area is defined as all waters of the EEZ south of 42°20′ N. lat. and east of 70°00′ W. long. or the outer boundary of the territorial sea, whichever lies farther east;

(iii) *Southern New England gear area.* Southern New England gear area is defined as all waters of the EEZ west of 70°00′ W. long., east of 71°30′ W. long. at a depth greater than 25 fathoms (45.72 m); and

(iv) *Mid-Atlantic gear area.* Mid-Atlantic gear area is defined as all waters of the EEZ, west of 71°30′ W. long. and north of 36°33′ N. lat. at a depth greater than 40 fathoms (73.15 m).

(c) *Escape vents.* (1) All American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than $1^{15}/_{16}$ inches (4.92 cm) by $5^{3}/_{4}$ inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than $2^{7}/_{16}$ inches (6.19 cm) in diameter.

(2) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this final rule, any other type of acceptable escape vent that the Regional Administrator finds to be consistent with paragraphs (c)(1)(i) and (ii) of this section.

(d) *Ghost panel.* (1) Lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel located in the outer parlor(s) of the trap and not in the bottom of the trap constructed of, or fastened to the trap with, one of the following untreated materials: Wood lath, cotton, hemp, sisal or jute twine not greater than $^{3}/_{16}$ inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than $^{3}/_{32}$ inch

(0.24 cm) in diameter and covering a rectangular opening not less than 3¾ inches (9.53 cm) by 3¾ inches (9.53 cm). The door of the trap may serve as the ghost panel, if fastened with one of these materials.

(2) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this rule, any other design, mechanism, material, or other parameter that serves to create an escape portal not less than 3¾ inches (9.53 cm) by 3¾ inches (9.53 cm).

(e) *Maximum trap size.* (1) *EEZ Nearshore Management Area maximum trap size.* (i) Beginning January 5, 2000, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape, Area 2, Area 4, Area 5, or Area 6) and the Area 2/3 Overlap, or only in the Area 2/3 Overlap shall not exceed 25,245 cubic inches (413,690 cubic centimeters) in volume, as measured on the outside portion of the trap, exclusive of the runners;

(ii) Beginning May 1, 2003, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish in any EEZ Nearshore Management Area (Area 1, Outer Cape, Area 2, Area 4, Area 5, or Area 6) and the Area 2/3 Overlap, or only in the Area 2/3 Overlap, shall not exceed 22,950 cubic inches (376,081 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners.

(2) *EEZ Offshore Management Area maximum trap size.* (i) Beginning January 5, 2000, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish only in EEZ Offshore Management Area 3 or only in EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not exceed 33,110 cubic inches (542,573 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners;

(ii) Beginning May 1, 2003, American lobster traps deployed or possessed in the EEZ, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit as specified under § 697.4, if deployed or possessed by a person or vessel permitted to fish only in EEZ Offshore Management Area 3 or only in EEZ Offshore Management Area 3 and the Area 2/3 Overlap, shall not exceed 30,100 cubic inches (493,249 cubic centimeters) in volume as measured on the outside portion of the trap, exclusive of the runners.

(f) *Enforcement action.* Unidentified, unmarked, unvented, improperly vented American lobster traps, or, beginning May 1, 2000, any untagged American lobster traps, or any lobster traps subject to the requirements and specifications of § 697.21, which fail to meet such requirements and specifications may be seized and disposed of in accordance with the provisions of part 219 of this title.

§ 697.22 Exempted fishing.

The Regional Administrator may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic striped bass, or Atlantic sturgeon, resource or fishery pursuant to the provisions of § 600.745 of this chapter.

(a) The Regional Administrator may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of any applicable stock rebuilding program, the provisions of the ACFCMA, the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the American lobster, Atlantic striped bass, weakfish, or Atlantic sturgeon resource or fishery; or

(2) Create significant enforcement problems.

(b) Each vessel participating in any exempted fishing activity is subject to all provisions of this part, except those explicitly relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption. Exempted fishing activity shall be authorized pursuant to and consistent with § 600.745 of this chapter.

§ 697.23 Restricted gear areas.

(a) Resolution of lobster gear conflicts with fisheries managed under the Magnuson-Stevens Act shall be done under provisions of § 648.55 of this chapter.

(b) *Restricted Gear Area I*—(1) *Duration*—(i) *Mobile Gear.* From October 1 through June 15 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area I, as defined in paragraph (b)(2) of this section, unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear.* From June 16 through September 30 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area I as defined in paragraph (b)(2) of this section.

(2) *Definition of Restricted Gear Area I.* Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

Point to	Latitude	Longitude
120	40°06.4′ N.	68°35.8′ W.
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
72	40°08.7′ N.	68°49.6′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W.
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2′ W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.

INSHORE BOUNDARY—Continued

Point to	Latitude	Longitude
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181	39°59.3′ N.	70°14.0′ W.

OFFSHORE BOUNDARY

Point to	Latitude	Longitude
69	40°07.9′ N.	68°36.0′ W.
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ N.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.7′ N.	70°13.05′ W.

OFFSHORE BOUNDARY—Continued

Point to	Latitude	Longitude
181	39°59.3′ N.	70°14.0′ W. to
119	40°02.75′ N.	70°16.1′ W.

(c) *Restricted Gear Area II*—(1) *Duration*—(i) *Mobile Gear.* From November 27 through June 15 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area II (as defined in paragraph (c)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear.* From June 16 through November 26 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area II as defined in paragraph (c)(2) of this section.

(2) *Definition of Restricted Gear Area II.* Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

Point to	Latitude	Longitude
1	39°59.3′ N.	70°14.0′ W.
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48	39°29.0′ N.	72°09.25′ W.

OFFSHORE BOUNDARY

Point to	Latitude	Longitude
49	40°02.75′ N.	70°16.1′ W.
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.

OFFSHORE BOUNDARY—Continued

Point to	Latitude	Longitude
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70	39°29.75′ N.	72°09.8′ W.

(d) *Restricted Gear Area III*—(1) *Duration*—(i) *Mobile Gear.* From June 16 through November 26 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area III (as defined in paragraph (d)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster trap gear.* From January 1 through April 30 of each fishing year, no fishing vessel with lobster trap gear or person on a fishing vessel with lobster trap gear may fish, and no lobster trap gear may be deployed or remain, in Restricted Gear Area III as defined in paragraph (d)(2) of this section.

(2) *Definition of Restricted Gear Area III.* Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

Point to	Latitude	Longitude
49	40°02.75′ N.	70°16.1′ W.
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.

INSHORE BOUNDARY—Continued

Point to	Latitude	Longitude
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70	39°29.75′ N.	72°09.8′ W.

OFFSHORE BOUNDARY

Point to	Latitude	Longitude
182	40°05.6′ N.	70°17.7′ W.
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 192	39°33.65′ N.	72°15.0′ W.

(e) *Restricted Gear Area IV*—(1) *Duration for Mobile Gear.* From June 16 through September 30 of each fishing year, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be, in Restricted Gear Area IV (as defined in paragraph (e)(2) of this section) unless transiting only, provided that all mobile gear is on board the vessel while inside the area.

(2) *Definition of Restricted Gear Area IV.* Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

INSHORE BOUNDARY

Point	Latitude	Longitude
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.

INSHORE BOUNDARY—Continued

Point	Latitude	Longitude
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	70°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206	40°07.80′ N.	70°09.20′ W.
to 119	40°02.75′ N.	70°16.1′ W.

OFFSHORE BOUNDARY

Point to	Latitude	Longitude
193	40°13.60′ N.	68°40.60′ W.
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.80′ N.	69°20.35′ W.
93	39°56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39°56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 206	40°07.80′ N.	70°09.20′ W.

§ 697.24 Exempted waters for Maine State American lobster permits.

A person or vessel holding a valid permit or license issued by the State of Maine that lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobsters in the following areas designated as EEZ, if such fishing is conducted in such waters in accordance with all other applicable Federal and State regulations:

(a) West of Monhegan Island in the area located north of the line 43.5 deg.42°08″ N. lat., 69.5 deg.34′18″ W. long., and 43.5 deg.42′15″ N. lat., 69.5 deg.19′18″ W. long.

(b) East of Monhegan Island in the area located west of the line 43.5 deg.44′00″ N. lat., 69.5 deg.15′05″ W. long., and 43.5 deg.48′10″ N. lat., 69.5 deg.08′01″ W. long.

(c) South of Vinalhaven in the area located west of the line 43.5 deg.52′21″ N. lat., 68.5 deg.39′54″ W. long., and 43.5 deg.48′10″ N. lat., 67.5 deg.40′33″ W. long.

(d) South of Boris Bubert Island in the area located north of the line 44.5 deg.19′15″ N. lat, 67.5 deg.49′30″ W. long. and 44.5 deg.23′45″ N. lat., 67.5 deg.40′33″ W. long.

§ 697.25 Adjustment to management measures.

(a) On or before February 15, 2001, and annually on or before February 15, thereafter, NMFS may, after consultation with the Commission, publish a proposed rule to implement additional or different management measures for Federal waters in any of the management areas specified in § 697.18 if it is determined such measures are necessary to achieve or be compatible with ISFMP objectives, or the ISFMP, to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. These management measures may include, but are not limited to, continued reductions of fishing effort or numbers of traps, increases in minimum or decreases in maximum size, increases in the escape vent size, decreases in the lobster trap size, closed areas, closed seasons, landing limits, trip limits and other management area-specific measures as may be identified and recommended by the Commission prior to December 1 of the previous year. After considering public comment, NMFS may publish a final rule to implement any such measures.

(b) At any other time, NMFS may publish a proposed rule, after consultation with the Commission, to implement any additional or different management measures in order to achieve ISFMP objectives or be compatible with Commission measures or recommendations or to be consistent with the national standards of the Magnuson-Stevens Act, or to meet overfishing and rebuilding requirements of the Magnuson-Stevens Act. After

considering public comments, NMFS may publish a final rule to implement any such measures.

(c) Notwithstanding other provisions of this part, NMFS may publish any additional or different management measures as described herein without prior public comment, pursuant to and consistent with 5 U.S.C. 553.

[FR Doc. 99–30824 Filed 12–3–99; 8:45 am]
BILLING CODE 3510–22–P

federal register

Monday
December 6, 1999

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 551

Victim and/or Witness Notification: State Custody Transfers; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

[BOP–1085–F]

RIN 1120–AA80

Victim and/or Witness Notification: State Custody Transfers

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its regulations to provide for notification when an inmate is transferred to a State or local detention facility for service of sentence. This amendment is intended to provide for the protection of the public in accordance with Attorney General guidelines for victim and witness assistance.

EFFECTIVE DATE: December 6, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Victim and/or Witness Notification (28 CFR part 551, subpart M). A final rule on this subject was published in the **Federal Register** on April 30, 1984 (49 FR 18386), and was amended February 21, 1990 (55 FR 6178), and February 4, 1994 (59 FR 5514).

Attorney General guidelines for victim and witness assistance specify that a responsible official in the Bureau of Prisons shall make reasonable and diligent efforts to provide a victim with custodial release notification. Such custodial release notification can be reasonably made for inmates who are in the custody of the Bureau at a Bureau institution. In certain instances (for example, when an inmate has a concurrent State sentence) an inmate who has been convicted of a Federal offense may serve his or her Federal sentence while in State custody at a State facility. In these instances, Bureau staff may not have timely notice of changes in the inmate's status relating to release as that term is defined in § 551.151(d).

The Bureau is accordingly revising its statement of purpose and scope in § 551.150 to note that notification is made for ''release from a Bureau institution'' rather than ''release from prison'' as previously specified. The phrase ''release from a Bureau institution'' is then defined in § 551.151 in place of the term ''release'' and revised to include the phrase ''transfer to a State or local detention facility''. Under the revised definition, the Bureau is obligated to notify a victim and/or witness of this change in the inmate's status because the inmate is no longer in Bureau custody at a Bureau institution. Further information on the inmate's status while in State custody may be made available through the coordinating official in the appropriate United States Attorney's Office or Department of Justice investigating field office.

Because this amendment enhances the ability of the Bureau to assist and protect victims and witnesses of crime by providing timely notification of release, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 551

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 551 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR 551 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28

U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99; Attorney General's May 1, 1995 Guidelines for Victim and Witness Assistance.

2. Section 551.150 is revised to read as follows:

§ 551.150 Purpose and scope.

The Bureau of Prisons provides a requesting victim and/or witness of a serious crime with information on the release from a Bureau institution of the inmate convicted of that serious crime.

3. In § 551.151, paragraph (d) is revised to read as follows:

§ 551.151 Definitions.

* * * * *

(d) For purpose of this rule, the phrase *release from a Bureau institution* refers to an inmate's furlough, parole (including appearance before the Parole Commission), transfer to a State or local detention facility, transfer to a community corrections center, mandatory release, expiration of sentence, escape (including apprehension), death, and other such release-related information.

[FR Doc. 99–31499 Filed 12–3–99; 8:45 am]

BILLING CODE 4410–05–P

federal register

Monday
December 6, 1999

Part V

The President

Proclamation 7257—National Drunk and Drugged Driving Prevention Month, 1999

Federal Register
Vol. 64, No. 233
Monday, December 6, 1999

Presidential Documents

Title 3—

The President

Proclamation 7257 of November 30, 1999

National Drunk and Drugged Driving Prevention Month, 1999

By the President of the United States of America

A Proclamation

Drivers who operate motor vehicles while under the influence of alcohol or drugs are one of our Nation's greatest public safety risks; those drivers take advantage of the privilege of driving without assuming the corresponding responsibility of driving safely. In 1996 alone, more than 46 million Americans drove their cars within 2 hours of using drugs, alcohol, or both, causing death or injury to themselves and thousands of others each year.

Thanks to the grassroots activism of organizations such as Mothers Against Drunk Driving, greater public awareness of the dangers of impaired driving, and stronger laws and stricter enforcement, we have made progress in our efforts to keep drunk and drugged drivers off the road and reduce alcohol-related fatalities. Last year, the number of people killed in alcohol-related crashes reached a record low, and the number of young people killed in such accidents fell to the lowest rate ever recorded. But as anyone who has lost a loved one to an alcohol-related crash will attest, one impaired driver on the road is one too many.

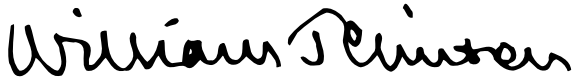
That is why safety continues to be my Administration's top transportation priority, and that is why we remain committed to eliminating drunk and drugged driving. Because research shows that the risk of a fatal car crash significantly increases when a driver's blood alcohol content (BAC) exceeds .08, I continue to challenge the Congress to enact a tough national standard of impaired driving at .08 BAC. In support of this goal, last July Vice President Gore announced incentive grants totaling $57 million to 17 States and the District of Columbia for lowering the legal threshold for drunk driving to .08 BAC. These grants make up part of the more than $500 million in Federal grants authorized under the Transportation Equity Act for the 21st Century, which I signed into law June 9, 1998, to offer States incentives to enact and enforce laws that make driving with .08 BAC or greater a drunk driving offense.

I am pleased that today, thanks to legislation I signed in 1995, every State in our Nation and the District of Columbia has enacted zero tolerance laws for underage drinking and driving. I urge leaders and policymakers at the State and local level to continue to focus resources and public attention on drunk- and drugged-driving prevention and enforcement programs. Using these three powerful tools—increased public awareness, stronger laws, and tougher enforcement—we can make our neighborhoods and highways safer and continue to reduce deaths and injuries.

In memory of the thousands of people who have lost their lives to alcohol- and drug-impaired driving, I ask that all motorists participate once again this year in a ''National Lights on for Life Day.'' By driving with car headlights illuminated on Friday, December 17, 1999, we will underscore the profound responsibility each of us has to drive free from the influence of alcohol or drugs.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1999 as National Drunk and Drugged Driving Prevention Month. I urge all Americans to recognize the dangers of impaired driving, to take responsibility for themselves and others around them, to prevent anyone under the influence of alcohol or drugs from getting behind the wheel, and to help teach our young people about the importance of safe driving.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



[FR Doc. 99–31740
Filed 12–3–99; 8:59 am]
Billing code 3195–01–P

federal register

Monday
December 6, 1999

Part VI

The President

Executive Order 13143—Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States

Federal Register
Vol. 64, No. 233
Monday, December 6, 1999

Presidential Documents

Title 3—

The President

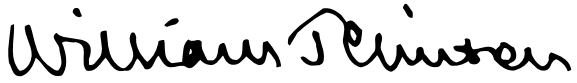
Executive Order 13143 of December 1, 1999

Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 50 U.S.C. 191, I hereby prescribe the following amendment to the regulations prescribed by Executive Order 10173 of October 18, 1950, as amended, which regulations constitute Part 6, Subchapter A, Chapter I, Title 33 of the Code of Federal Regulations:

Section 6.01–4 is amended to read as follows:

§6.01–4 *Waterfront facility.* ''Waterfront facility,'' as used in this part, means all piers, wharves, docks, or similar structures to which vessels may be secured and naval yards, stations, and installations, including ranges; areas of land, water, or land and water under and in immediate proximity to them; buildings on them or contiguous to them and equipment and materials on or in them.



THE WHITE HOUSE,
December 1, 1999.

[FR Doc. 99–31748
Filed 12–3–99; 10:42 am]
Billing code 3195–01–P

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.J. Res. 80/P.L. 106–105

Making further continuing appropriations for the fiscal year 2000, and for other purposes. (Nov. 18, 1999; 113 Stat. 1484)

H.J. Res. 83/P.L. 106–106

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H.R. 2724/P.L. 106–109

To make technical corrections to the Water Resources Development Act of 1999. (Nov. 24, 1999; 113 Stat. 1494)

S. 1235/P.L. 106–110

To amend part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the Federal Bureau of Investigation National Academy for law enforcement training. (Nov. 24, 1999; 113 Stat. 1497)

H.R. 100/P.L. 106–111

To establish designations for United States Postal Service buildings in Philadelphia, Pennsylvania. (Nov. 29, 1999; 113 Stat. 1499)

H.R. 197/P.L. 106–112

To designate the facility of the United States Postal Service at 410 North 6th Street in Garden City, Kansas, as the ''Clifford R. Hope Post Office''. (Nov. 29, 1999; 113 Stat. 1500)

H.R. 3194/P.L. 106–113

Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes. (Nov. 29, 1999; 113 Stat. 1501)

S. 278/P.L. 106–114

To direct the Secretary of the Interior to convey certain lands to the county of Rio Arriba, New Mexico. (Nov. 29, 1999; 113 Stat. 1538)

S. 382/P.L. 106–115

Minuteman Missile National Historic Site Establishment Act of 1999 (Nov. 29, 1999; 113 Stat. 1540)

S. 1398/P.L. 106–116

To clarify certain boundaries on maps relating to the Coastal Barrier Resources System. (Nov. 29, 1999; 113 Stat. 1544)

H.R. 2116/P.L. 106–117

Veterans Millennium Health Care and Benefits Act (Nov. 30, 1999; 113 Stat. 1545)

H.R. 2280/P.L. 106–118

Veterans' Compensation Cost-of-Living Adjustment Act of 1999 (Nov. 30, 1999; 113 Stat. 1601)

Last List November 16, 1999

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–038–00098–9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
*1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.