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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 13, 2000, at 9:00 a.m.

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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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634, 2635 and 2638

RINs 3209–AA00 and 3209–AA04

Technical Updating Amendments and Correction to Certain Executive Branch Regulations of the Office of Government Ethics

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is updating and correcting some of the sections of its executive branch regulations on financial disclosure, standards of ethical conduct and ethics responsibilities. These amendments include the addition to the financial disclosure regulation of statutorily mandated higher categories of value reporting and adjustment of the reporting thresholds for gifts and travel reimbursements. In addition, OGE is raising the dollar ceiling for widely attended gathering nonsponsor gifts under the standards regulation.

DATES: The amendments in this rulemaking document are effective November 20, 2000, except for the amendments to 5 CFR 2634.304 that are being made retroactively effective to January 1, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending various sections of its executive branchwide ethics regulations on financial disclosure, standards of ethical conduct (the Standards), and Government ethics responsibilities, as codified at 5 CFR parts 2634, 2635 and 2638, in order to update them. These technical amendments also include a correction of a typographical error in 5 CFR 2634.301(d)(6).

These revisions to pertinent provisions of OGE's branchwide financial disclosure regulation, as codified at 5 CFR 2634.301(d) and 2634.302(b)(1), will add to the regulation the higher categories of value for assets, income, transactions and liabilities over $1,000,000 as required for public reports (on the Standard Form (SF) 278) under the Ethics in Government Act (the Ethics Act), as amended by sections 20 and 22 of the 1995 Lobbying Disclosure Act (Public Law 104–65). See section 102(a)(1)(B), (d)(1) and (e)(1) and the then-newly added section 102(a)(8) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(1)(B), (a)(8), (d)(1) and (e)(1). The higher categories of value for assets, transactions (as recently determined by OGE for reports on the new 2000 edition of the SF 278 only), and liabilities are: $1,000,001 to $5,000,000; $5,000,001 to $25,000,000; $25,000,001 to $50,000,000; and over $50,000,000. For income, the higher categories are: $1,000,001 to $5,000,000; and over $5,000,000. The new regulatory text would also clarify that the higher categories only apply to items held by the report filer alone or jointly with his or her spouse and/or dependent children. For any such items held *solely* by a filer's spouse and/or dependent children, only the traditional ''over $1,000,000'' category would apply. To date, in a series of guidance memorandums over the years, OGE has asked departments and agencies to so notify filers administratively.

In addition, OGE is retroactively adjusting, to January 1, 1999, the reporting thresholds for gifts and travel reimbursements in the OGE executive branchwide regulation at 5 CFR 2634.304 (& as illustrated in examples following that section) for both the public and confidential financial disclosure systems under section 102(a)(2)(A) & (B) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(2)(A) & (B), as extended to the executive branch confidential reporting system in subpart I of OGE's 5 CFR part 2634 regulation. These changes are necessitated by the increase by the General Services Administration (GSA) of the ''minimal value'' to $260 or less (from the prior level of $245 or less) for the three-year period 1999–2001 under the Foreign Gifts and Decorations Act, to which the Ethics Act and OGE regulatory thresholds are pegged. See 64 FR 13700–13701 (March 22, 1999), revising the GSA foreign gifts regulation, now to be codified at new 41 CFR 102–42.10 (formerly § 101–49.001–5), see 65 FR 45540 (July 24, 2000). The new reporting thresholds being codified in OGE's financial disclosure regulation are ''more than $260'' for the aggregation threshold for reporting and ''$104 or less'' for gifts and reimbursements which do not have to be counted towards the aggregate threshold (from the prior levels of $250 and $100, respectively). Further, OGE will adjust those thresholds in the future as needed in light of GSA's revaluation of ''minimal value'' every three years for foreign gifts purposes.

Finally, the widely attended gathering gift exception ceiling for nonsponsor gifts of free attendance under the standards of ethical conduct regulation, at 5 CFR 2635.204(g)(2) (& as illustrated in a couple of examples following paragraph (g)), will likewise be raised from $250 to $260. As OGE noted in the preambles to the proposed and final rules on such nonsponsor gifts, that ceiling is based in part on the financial disclosure gifts reporting threshold. See 60 FR 31416 (June 15, 1995) and 61 FR 42968 (August 20, 1996). Thus, it is reasonable now to adjust the nonsponsor gift ceiling to match the increase in the reporting threshold. The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

In addition, OGE is adding an unrelated reference in the related statutes section of the Standards, at 5 CFR 2635.902(l), to the criminal prohibition at 18 U.S.C. 1030 on fraudulent access and related activity in connection with computers.

Finally, OGE is updating the citations to the Ethics Act financial disclosure provisions, current Executive Order 12674 (as modified by E.O. 12731), and the definition of the executive branch in the pertinent provisions of 5 CFR part 2638 on ethics responsibilities of OGE and designated agency ethics officials.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these technical updates and the correction. The notice, comment and delayed effective date provisions are being waived in part because these minor amendments concern matters of agency organization, practice and procedure. Further, it is in the public interest that correct and up-to-date information be contained in the affected sections of OGE's regulations as soon as possible. The increase in the reporting thresholds for gifts and reimbursements also lessens the reporting burden somewhat, and thus the effective date of that regulatory revision is being made retroactively effective to January 1, 1999, when the change became effective under the Ethics Act, as amended.

Executive Order 12866

In promulgating these minor amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed ''significant'' thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has provided a report thereon to the Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2635

Conflict of interests, Government employees.

5 CFR Part 2638

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: November 13, 2000.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics pursuant to its authority under the Ethics in Government Act and Executive Order 12674, as modified by E.O. 12731, is amending 5 CFR parts 2634, 2635 and 2638 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.301 is amended by removing the dollar amount ''$1,00,000'' in paragraph (d)(6) and adding in its place the dollar amount ''$1,000,000'', by removing the ''.'' following paragraph (d)(7) and adding a '';'' in its place, and by adding a new paragraph (d)(8) to read as follows:

§ 2634.301 Interests in property.

* * * * *

(d) * * *

(8) Provided that, with respect to items held by the filer alone or held jointly by the filer with the filer's spouse and/or dependent children, the following additional categories over $1,000,000 shall apply:

(i) Greater than $1,000,000 but not more than $5,000,000;

(ii) Greater than $5,000,000 but not more than $25,000,000;

(iii) Greater than $25,000,000 but not more than $50,000,000; and

(iv) Greater than $50,000,000.

* * * * *

3. Section 2634.302 is amended by removing the ''.'' following paragraph (b)(1)(viii) and adding a '';'' in its place, and by adding a new paragraph (b)(1)(ix) to read as follows:

§ 2634.302 Income.

* * * * *

(b) * * *

(1) * * *

(ix) Provided that, with respect to investment income of the filer alone or joint investment income of the filer with the filer's spouse and/or dependent children, the following additional categories over $1,000,000 shall apply:

(A) Greater than $1,000,000 but not more than $5,000,000; and

(B) Greater than $5,000,000.

* * * * *

§ 2634.304 [Amended]

4. Section 2634.304 is amended by:

a. Removing the words ''$250 or more'' in paragraphs (a) and (b) and in Example 1 following paragraph (d) and adding in their place in each instance the words ''more than $260'';

b. Removing the note following paragraph (b) and the first note following paragraph (d);

c. Removing the dollar amounts ''$100'' in paragraph (d) and in Examples 1 and 2 following paragraph (d) and adding in their place in each instance the dollar amount ''$104'';

d. Removing the dollar amount ''$150'' in Example 1 following paragraph (d) and adding in its place the dollar amount ''$190'';

e. Removing the dollar amounts ''$130'' and ''$250'' in Example 3 following paragraph (d) and adding in their place, respectively, the dollar amount ''$150'' and the words ''more than $260''; and

f. Removing the dollar amount ''$250'' in Example 4 following paragraph (d) and adding in its place the dollar amount ''$260''.

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

5. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2635.204 [Amended]

6. Section 2635.204 is amended by removing the dollar amounts ''$250'' in paragraph (g)(2) and in Examples 1 and 2 following paragraph (g)(6) and adding in their place in each instance the dollar amount ''$260'', and by removing the dollar amount ''$500'' in Example 2 following paragraph (g)(6) and adding in its place the dollar amount ''$520''.

7. Section 2635.902 is amended by adding a new paragraph (l), previously reserved, to read as follows:

§ 2635.902 Related statutes.

* * * * *

(l) The prohibition against fraudulent access and related activity in connection with computers (18 U.S.C. 1030).

* * * * *

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

8. The authority citation for part 2638 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 2638.101 [Amended]

9. Section 2638.101 is amended by removing the references to ''II'' in paragraphs (a) and (b) and adding in their place in each instance the reference ''I'', and by adding the words ''executive branch'' between the words ''These'' and ''regulations'' in paragraph (b).

10. Section 2638.104 is amended by revising the definition of ''Executive branch'' to read as follows:

§ 2638.104 Definitions.

* * * * *

Executive branch includes each executive agency as defined in 5 U.S.C. 105 and any other entity or administrative unit in the executive branch. However, it does not include any agency, entity, office or commission that is defined by or referred to in 5 U.S.C. app. 109(8)–(11) of the Act as within the judicial or legislative branch.

* * * * *

§ 2638.201 [Amended]

11. Section 2638.201 is amended by removing the references to ''II'' and adding in their place in each instance the reference ''I'', and by removing the words ''11222 (relating to standards of conduct'' between the words ''Order'' and ''for'' in the last sentence and adding in their place the words ''12674 as modified (relating to principles of ethical conduct''.

[FR Doc. 00–29493 Filed 11–17–00; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB52

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that comments were received regarding direct final rule on General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, and reconfirms the effective date of the direct final rule. This notice also serves to address the comments received.

DATES: The direct final rule, which was published on May 17, 2000, at 65 FR 31246, was effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Wei M. Moy, Chief, Power Resources & Planning Branch, Power Supply Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1568, 1400 Independence Avenue, SW, Washington, DC 20250–1568. Telephone: (202) 720–1438. FAX (202) 720–1401. E-mail: wmoy@rus.usda.gov.

Background

The Rural Utilities Service (RUS) published a direct final rule on May 17, 2000, at 65 FR 31246, in the **Federal Register** amending § 1710.254, Alternative Sources of Power, to allow flexibility in determining whether a borrower needs to solicit bids from all sources for new or replacement generation. It also deleted the requirement that borrowers seek bids if RUS financial assistance is requested from all sources for generation projects of 10 megawatts or more or for modifications to existing plants if it results in an increase in capacity of 10 percent. RUS reserves the right to review each project on a case-by-case basis and determine whether there is a need for a borrower to seek bids from all sources for the project.

RUS received comments from three parties on this direct final rule, two of which were deemed adverse. According to RUS policy, should adverse comments be received concerning a direct final rule, the agency would withdraw the direct final rule and the companion proposed rule, which was published in the same issue of the **Federal Register**, would be the ruling action. RUS failed to issue a withdrawal notice. As a result, the direct final rule became effective on July 3, 2000. In lieu of this oversight, RUS feels that this notice of confirmation of direct final rule serves to address the concerns of the commentors and at the same time confirms the effective date of the direct final rule. If not for this oversight, this rule would have become effective through the normal regulatory process though its companion proposed rule and then as a final rule.

A summaries of these comments and responses follows:

Comments

Comment: Tri-State is in agreement with the amendment, and appreciates the flexibility that RUS has written into this amendment. However, Tri State recommended (1) That language be added regarding environmental issues, and (2) that, if RUS requires an applicant to solicit proposals for sources of power, the applicant be allowed to comply with the requirement by submitting competitive bids previously obtained by regional utilities.

Reply: RUS appreciates the support for its efforts to modify the requirement that borrowers must seek bids from all sources if funding is requested for generation projects equal to or greater than 10 megawatt or for modifications to existing plants if it results in an increase in capacity of 10 percent or more. Although the comments on environmental issues and the timing of competitive bid solicitations are appreciated, RUS feels these comments are non-responsive and do not effect language in the regulation.

Comment: Otter Tail suggests that competitive bidding should be a standard imposed on any party seeking federal financing and that the inefficiencies in the review and approval process should not cause delays in an efficiently run business or agency. Otter Tail feels that RUS borrowers should be meeting their power needs within the market place and only when competitive policies have been followed should any

borrower be eligible for federally subsidized loans.

Reply: The amendment does not abandon the practice of seeking competitive bids. Upon an RUS review of each project, a determination will be made whether there is a need for a borrower to seek competitive bids for the project. This evaluation by RUS will be performed on a case-by-case basis. RUS will continue to follow good business practice and make sound business decisions. At the same time, RUS will provide its borrowers with the flexibility to make sound business decisions to meet the power needs of rural America.

Comment: Edison objects to the amendment, stating that the present regulation has been in existence for a long time and is entirely consistent with the nation's transition to competitive wholesale power markets. RUS borrowers should seek to meet their power needs out of these markets and make every effort to do so before seeking more assistance from RUS in the form of subsidized loans.

Reply: This amendment deletes the requirement that borrowers seek bids if RUS financial assistance is requested from all sources for 10 megawatts or more or for modifications to existing plants if it results in an increase in capacity of 10 percent. RUS will review each project on a case by case basis and determine whether there is a need for a borrower to seek competitive bids from all sources for the project. RUS will provide its borrowers with the flexibility to make sound business decisions to meet the power needs of rural America.

The direct final rule requires RUS to review each project on a case-by-case basis and determine whether there is a need for a borrower to seek bids from all sources for the project. Following the initial RUS review, if it is determined that a full solicitation for bids to supply new or replacement generation is necessary, then RUS will require such an evaluation process be completed. This amendment in no way is intended to minimize the need for all borrowers to follow good business practice in making economically sound business decisions. The direct final rule provides RUS electric borrowers with the flexibility and tools necessary to make prudent decisions to meet the power needs of rural customers in the competitive environment advanced by industry restructuring efforts.

These amendments to § 1710.254, provide borrowers with increased flexibility during the new and replacement electric power evaluation period. The new policy requires RUS to review each project on a case-by-case basis and determine whether there is a need for a borrower to seek bids from all sources for the project. Following this initial RUS review, if it is determined that a full solicitation for bids to supply new or replacement generation is necessary, then RUS will require that such an evaluation process be completed.

As the electric industry moves to a more competitive environment, it is imperative that RUS prudently review and revise policy when necessary. The amendments to 7 CFR part 1710 are in no way intended to minimize the need for all borrowers to follow good business practice in making economically sound business decisions. The direct final rule provides RUS borrowers with the flexibility and tools necessary to make prudent decisions to meet the power needs of rural customers in the competitive environment advanced by industry restructuring efforts.

To that effect the direct final rule stands as published.

Confirmation of Effective Date

This is to confirm the effective date of July 3, 2000, of the direct final rule, 7 CFR Part 1710, General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, published in the **Federal Register** on May 17, 2000, at 65 FR 31246.

Dated: November 13, 2000.

Anthony C. Haynes,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–29499 Filed 11–17–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–345–AD; Amendment 39–11969; AD 2000–22–21]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10, Model MD–10, and Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10, Model MD–10, and Model MD–11 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to ensure that the flight crew is advised of appropriate procedures for disabling certain fuel pump electrical circuits following failure of a fuel pump electrical connector. For certain airplanes, this action also requires revising the AFM to prohibit resetting of tripped fuel pump circuit breakers. This action is necessary to prevent continued arcing following a short circuit of the fuel pump electrical connector, which could damage the conduit that protects the power lead inside the fuel tank, and result in the creation of a potential ignition source in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective December 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 19, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–345–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–345–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA,

Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of four incidents on McDonnell Douglas Model DC–10 and MD–11 series airplanes, in which a short circuit occurred in the electrical connector between the power lead and the housing of a fuel pump. The circuit breaker did not trip in any of these incidents because the electrical arcing that occurred was shorter in duration than necessary for the circuit breaker to detect the arcing and open the circuit. In the event of such a short circuit of a fuel pump electrical connector, continued arcing of the electrical connector could damage the conduit that protects the power lead inside the fuel tank, which could create a potential ignition source in the fuel tank.

The subject fuel pump electrical connector on all McDonnell Douglas Model MD–10 series airplanes is identical to that on McDonnell Douglas Model DC–10 and MD–11 series airplanes on which the incidents occurred. Therefore, all of these airplanes may be subject to the unsafe condition described above.

In addition, the Procedures Section of the FAA-approved Airplane Flight Manual (AFM) for McDonnell Douglas Model DC–10 and certain MD–11 series airplanes permits the flight crew to reset the fuel pump circuit breaker one time if the circuit breaker is tripped. (If it is tripped again, the AFM prohibits resetting it.) However, tripping of the circuit breaker may be caused by arcing following short circuit of a fuel pump electrical connector. Resetting the fuel pump circuit breaker if it is tripped due to arcing could allow arcing to continue and create a potential ignition source in the fuel tank. (The Limitations Section of the AFM for McDonnell Douglas Model MD–10 series airplanes already prohibits resetting the fuel pump circuit breaker; therefore, these airplanes are not subject to this unsafe condition.)

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Flight Operations Bulletin DC–10–00–01A, MD–11–00–03A, and MD–10–00–02A, dated September 20, 2000. The flight operations bulletin provides instructions for revising the Procedures Section of the FAA-approved AFM by inserting certain Interim Operating Procedures (IOP). These IOP's advise the flight crew of proper procedures for disabling certain fuel pump electrical circuits following failure of a fuel pump electrical connector.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent continued arcing following a short circuit of the fuel pump electrical connector, which could damage the conduit that protects the power lead inside the fuel tank, and result in the creation of a potential ignition source in the fuel tank. This AD requires accomplishment of the actions specified in the flight operations bulletin described previously. For certain airplanes, this AD also requires revising the Limitations Section of the FAA-approved AFM to prohibit resetting of any fuel pump circuit breakers.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing an inspection and a modification that will positively address the unsafe condition addressed by this AD. Once these actions are developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy 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 AD 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 Number 2000–NM–345–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–22–21 McDonnell Douglas: Amendment 39–11969. Docket 2000–NM–345–AD.

Applicability: All Model DC–10, Model MD–10, and Model MD–11 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent continued arcing following a short circuit of the fuel pump electrical connector, which could damage the conduit that protects the power lead inside the fuel tank, and result in the creation of a potential ignition source in the fuel tank, accomplish the following:

Airplane Flight Manual (AFM) Revision (Procedures Section)

(a) Within 14 days after the effective date of this AD, insert applicable Interim Operating Procedures regarding abnormal operations for fuel pump electrical connector failures into the Procedures Section of the FAA-approved AFM, in accordance with Boeing Flight Operations Bulletin DC–10–00–01A, MD–11–00–03A, and MD–10–00–02A, dated September 20, 2000.

Airplane Flight Manual Revision (Limitations Section)

(b) For Model DC–10 and Model MD–11 series airplanes: Within 14 days after the effective date of this AD, insert the following information into the ''Fuel Management'' paragraph of the Limitations Section of the FAA-approved AFM which may be accomplished by inserting a copy of this AD into the AFM.

''Do not reset any tripped fuel pump circuit breakers.''

Note 1: If the information in paragraph (b) of this AD is already in the ''Fuel Management'' paragraph of the Limitations Section of the AFM, no further action is required by paragraph (b) of this AD.

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, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles 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.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the AFM revision shall be done in accordance with Boeing Flight Operations Bulletin DC–10–00–01A, MD–11–00–03A, and MD–10–00–02A, dated September 20, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 5, 2000.

Issued in Renton, Washington, on November 1, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–28478 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–25–AD; Amendment 39–11986; AD 2000–23–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney JT9D series turbofan engines. This AD will require installation of an improved No. 4 bearing internal oil pressure tube, initial and repetitive inspections of the No. 4 bearing oil pressure tube for turbine exhaust case (TEC) strut clearance and alignment, and, if necessary, replacement with serviceable parts. This amendment is prompted by loss of integrity in the oil system that allows oil to migrate into high temperature metal cavities in the turbine exhaust case and cause oil fires. The actions specified by this AD are intended to prevent oil fires in and around the No. 4 bearing area that could cause excessive thermal growth of the sixth stage low pressure turbine (LPT) disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane.

DATES: Effective date January 19, 2001. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 19, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–6600, fax: (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7147, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) applicable to Pratt & Whitney (PW) JT9D series turbofan engines was published in the **Federal Register** on November 24, 1999 (64 FR 66118). That action proposed to require installation of an improved No. 4 bearing internal oil pressure tube, initial and repetitive inspections of the No. 4 bearing oil pressure tube for TEC strut clearance and alignment, and, if necessary, replacement with serviceable parts, in accordance with PW Service Bulletin (SB) No. 5707, dated September 17, 1986, and in accordance with certain sections of the PW JT9D Engine Manuals: part numbers (P/Ns) 646028, 770407, 770408, 777210, 785059, and 754459.

Comments Received

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

Reasons for This Modification and Inspection Program

One commenter states that the reports referenced in the NPRM focus only on engine fires, not uncontained engine failure and aircraft damage. Since the commenter has been using a tube of a design earlier to the one required by this AD for a long time without incident, the commenter requests that the FAA confirm the reasons for the modification and inspection program.

The FAA investigated the reports of oil fires in and around the No. 4 bearing area on the PW JT9D series turbofan engines and concluded that the heat generated by the oil fires could cause excessive thermal growth of the sixth stage LPT disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane.

Applicability Section

One commenter requests the modification of the applicability section of the AD to specify the BG 700 series of the JT9D–7R4D engines. The applicability section of the NPRM includes the JT9D–7R4D series engines. The PW SB JT9D–7R4–72–289, dated March 26, 1986, applies to the BG 700 series. The commenter has the JT9D–7R4D (BG 900) series engines and would like the applicability section of the AD to reflect the BG 700 series.

The FAA agrees. The applicability section has been changed accordingly. Another commenter requests that the list of aircraft on which the affected engines may be installed be expanded to include Airbus A300 airplanes. The FAA agrees. The FAA will add Airbus A300 airplanes to the list, but cautions that this AD list is advisory in nature and does not limit the applicability of the AD to just those engines which are installed on the listed airplanes.

Engine Manual Part Numbers

One commenter requests that paragraph (b) reflect the JT9D–7A engine manual P/N 770408. The commenter also requests that the section title of 72–53–01 of the JT9D–59A engine manual, P/N 754459, be revised to reflect ''Heavy Maintenance Check'' instead of ''Inspection 01.''

The FAA agrees. The engine manual P/Ns listed in the NPRM contain all engine models affected. However, the engine manufacturer has issued model-specific versions of these manuals. Therefore, it is possible that the operator may only have the model-specific version of the manual and not the all-encompassing engine manuals referred to in this AD. Revised paragraph (b) includes references to the model-specific JT9D engine manuals and to correct the reference to the title of Section 72–53–01 of P/N 754459.

Inspection Interval

Another commenter requests that the FAA weigh the benefits of conducting frequent inspections against the additional risks incurred by conducting the inspections. The commenter also states that it has not experienced an oil pressure tube failure due to TEC strut misalignment. The commenter considers an inspection interval at each heavy engine shop visit to be adequate, as opposed to every time the ''N'' or ''P'' flange is separated.

Two commenters recommend that the FAA replace the word ''disconnected'' with the word ''separated.'' The phrase ''at the next time when the ''N'' or ''P'' flange is disconnected'' occurs three times in the AD. One of the commenters suggests that since a flange is normally separated, not disconnected, this language may cause some confusion.

The FAA agrees in part. The FAA has decided to change the definition of shop visit to better reflect the original intent of the inspection. The original intent was that the inspections be performed during a complete disassembly of the TEC; this is the frequency interval contained in the engine manuals. The proposed language even if the recommended change from ''disconnected'' to ''separated'' is made, could still be perceived as a more frequent inspection interval than that intended by the FAA. Based on comments received and further coordination with the engine manufacturer, the FAA has developed a more precise definition. Therefore, the FAA has revised the phrase, ''at the next time when the ''N'' or ''P'' flange is disconnected,'' to read: ''at the next turbine exhaust case disassembly when all hardware is stripped from the case.'' These inspections are required at the same frequency contained in the engine manuals.

Request for Confirmation of Terminating Action

One commenter requests that the FAA confirm if there is a terminating action for the repetitive clearance and alignment check in accordance with the engine manual. The commenter questions if replacement of the pressure tube in accordance with PW SB 5707 and JT9D–7R4–72–289 constitutes the terminating action.

The FAA does not agree. There is no terminating action for this inspection. The inspections are required to make sure that there is sufficient tube clearance and that the TEC strut is aligned correctly. This inspection is an integral part of maintaining the airworthiness of this tube.

FAA's Determination

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

Economic Analysis

There are approximately 2,310 engines of the affected design in the worldwide fleet. Approximately 1,183 of these engines are installed on airplanes of U.S. registry. Review of purchase orders indicate that approximately 1,547 pressure tubes have been sold to the airlines; therefore this action will affect no more than 763 engines. It will take approximately one work hour per engine to accomplish the proposed actions; the average labor rate is $60 per work hour. Required parts will cost approximately $1,465 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be no more than $1,163,575.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 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.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–14 Pratt & Whitney: Amendment 39–11986. Docket No. 99–NE–25–AD.

Applicability: Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –7Q, –7Q3, –20, –20J, –59A, –70A, and –7R4D (BG 700) series turbofan engines, installed on but not limited to Boeing 747 and 767, Airbus A300, and McDonnell Douglas DC–10 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 oil fires in and around the No. 4 bearing area, which could result in excessive growth of the sixth stage low pressure turbine (LPT) disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane, accomplish the following:

Installation of Improved Hardware

(a) At the next disassembly of the turbine exhaust case (TEC) when all hardware is stripped from the case after the effective date of this AD, install an improved No. 4 bearing internal oil pressure tube in accordance with PW Service Bulletin (SB) No. 5707, dated September 17, 1986, and SB JT9D–7R4–72–289, dated March 26, 1986.

Inspections

(b) Perform initial and repetitive inspections of the No. 4 bearing oil pressure tube and TEC strut for clearance and alignment, and, if necessary, replace with serviceable parts, in accordance with the applicable PW JT9D Engine Manuals, part numbers (P/Ns) 646028, 770407, 770408, and 777210, Section 72–53–01, Turbine Exhaust Case Assembly—Inspection 01; P/N 785059, Section 72–53–05, Turbine Exhaust Case Assembly—Inspection/Check–01–Config–2; and P/N 754459, Turbine Exhaust Section—Heavy Maintenance, Section 72–53–01, Turbine Exhaust Case Assembly—Check, as follows:

(1) Initially inspect at the next disassembly of the TEC when all hardware is stripped from the case after the effective date of this AD.

(2) Thereafter, inspect at every disassembly of the TEC when all hardware is stripped from the case.

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, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

Special Flight Permits

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

Incorporation by Reference

(e) The replacement of the oil pressure tube shall be done in accordance with PW Service Bulletin No. 5707, pages 1–7, dated September 17, 1986, and PW Service Bulletin No. JT9D–7R4–72–289, pages 1–6, dated March 26, 1986. The initial and repetitive inspections shall be done in accordance with the specified sections of the appropriate PW JT9D Engine Manual:

P/N	Section	Pages	Date
646028	72–53–01	805–809	March 1, 1999.
754459	72–53–01	508	October 15, 1999.
754459	72–53–01	508A–508D	April 15, 1999.
770407	72–53–01	805	March 1, 1999.
770408	72–53–01	805	March 1, 1999.
777210	72–53–01	805–806	October 15, 1998.
777210	72–53–01	807	April 15, 1999.
777210	72–53–01	815–818	October 15, 1998.
785059	72–53–05	803	March 15, 1999.
785059	72–53–05	807–810	March 15, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; telephone: (860) 565–6600, fax: (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 19, 2001.

Issued in Burlington, Massachusetts, on November 7, 2000.

Donald E. Plouffe,

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

[FR Doc. 00–29212 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–34]

Amendment to Class E Airspace; Algona, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace at Algona, IA. The FAA has developed Area Navigation (RNAV) Runway (RWY) 30 ORIGINAL, a Standard Instrument Approach Procedure (SIAP) to serve Algona Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for other Instrument Flight Rules (IFR) operations at this airport. This action will also amend the geographical coordinates of Algona Municipal Airport, IA.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 22, 2001.

Comments for inclusion in the Rules Docket must be received on or before January 15, 2001.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations and Airspace Branch, Air Traffic Division, ACE–530, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–34, 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 informed 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, Operations & 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 RNAV RWY 30 ORIGINAL, SIAP to serve the Algona Municipal Airport, Algona, IA. The amendment to Class E airspace at Algona, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Algona Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR procedures. 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 7400.9H, dated September 1, 2000, and effective September 16, 2000, 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 not 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, 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-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.

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. 00–ACE–34.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ACE IA Algona, IA [Revised]

Algona Municipal Airport, IA
(Lat. 43°04′40″N., long. 94°16′19″W)
Algona NDB
(Lat. 43°04′53″N., long. 94°16′21″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Algona Municipal Airport, and within 3.1 miles each side of the 294° bearing of the Algona NDB extending from the 6.4-mile radius to 10 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 3, 2000.

H.J. Lyons,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–29660 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–14]

RIN 2120–AA66

Alteration of VOR Federal Airway; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action eliminates a segment of Federal Airway V–382 (V–382) between Bryce Canyon, UT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and Grand Junction, CO, VORTAC. The FAA is taking this action to delete a portion of the airway because the flight inspection found the current route segment unusable for navigation.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2000, the FAA proposed to amend 14 CFR part 71 (part 71) to eliminate a segment of V–382 (65 FR 41388). This action was considered necessary due to the failure of repeated flight inspections on this segment of V–382. Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. No comments were received. Except of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

The FAA is amending part 71 to modify V–382 by eliminating the route segment between Bryce Canyon and Grand Junction, CO, VORTAC. Since 1998, V–382 has been unusable between Bryce Canyon, UT, VORTAC and the Grand Junction, CO, VORTAC. This segment of V–382 no longer passes flight inspection and is out of service. The action retains the route segment from Grand Junction, CO, VORTAC to Durango, CO, VORTAC.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airway listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–382 [Revised]

From Grand Junction, CO; Cones, CO; to Durango, CO.

* * * * *

Issued in Washington, DC, on November 13, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–29659 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–20]

RIN 2120–AA66

Amend Legal Description of Jet Route J–501

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of Jet Route 501 (J–501) in Canadian Airspace due to the decommissioning of the Camp Scott, British Columbia (BC), Radio Beacon (RBN).

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 2000, the FAA was notified by Transport Canada that Camp Scott, BC, RBN was decommissioned. This decommissioning action affects J–501 within Canada.

The Rule

This action amends title 14 CFR part 71 (part 71) by amending the legal description of J–501 in Canadian airspace due to the decommissioning of the Camp Scott, BC, RBN. The FAA is taking this action to remove reference to the Camp Scott RBN in the description of J–501. The decommissioning of the Camp Scott RBN will generate a break in the J–501 between the Tofino, BC, RBN and the Sandspit, BC, very high frequency omnidirectional range/tactical air navigation facility. This action provides an uninterrupted route on J–501.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 14 CFR 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 the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 2004—Jet Routes.

* * * * *

J–501 [Amended]

From San Marcus, CA, via Big Sur, CA; Point Reyes, CA, via Rogue Valley, OR; Hoquiam, WA; INT Hoquiam 354° and Tatoosh, WA, 162° radials; Tatoosh; Tofino, BC, Canada, RBN. From Sandspit, BC, Canada; Biorka Island, AK; Yakutat, AK; Johnstone Point, AK; Anchorage, AK; Sparrevohn, AK; Bethel, AK; to the INT of the Bethel 258° radial and the Anchorage CTA/FIR boundary, excluding the airspace within Canada.

* * * * *

Issued in Washington, DC, on November 13, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–29658 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Parts 1 and 311

Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended by the Debt Collection Improvement Act of 1996

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The Commission is correcting certain previously published adjustments to civil penalty amounts within its jurisdiction. These corrections will maintain the civil penalty amounts currently published in Commission Rule 1.98, as last adjusted in 1996. These corrections will not affect certain related amendments intended to incorporate previously omitted adjustments in civil penalty amounts for Recycled Oil Rule violations.

EFFECTIVE DATE: These amendments are effective November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447, atang@ftc.gov.

SUPPLEMENTARY INFORMATION: The Commission is correcting certain civil penalty inflation adjustments, 65 FR 60857 (Oct. 13, 2000), that were intended to update civil penalty amounts that the Commission last adjusted for inflation in 1996 under the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461 note. *See* 61 FR 54548 (Oct. 21, 1996), 55840 (Oct. 29, 1996). Section 5 of the FCPIAA requires, in relevant part, that any inflation ''increase'' since the last adjustment be rounded to the nearest multiple of $10 (for ''penalties less than or equal to $100''), the nearest $100 (for ''penalties greater than $100 but less than or equal to $1,000''), the nearest $1,000 (for ''penalties greater than $1,000 but less than or equal to $10,000''), or the nearest $5,000 (for ''penalties greater than $10,000 but less than or equal to $100,000'').

In determining how these rounding categories apply, the Commission had referred to the original statutory penalty amounts. For example, for penalties under section 5 of the FTC Act, the Commission used the rounding category ''for penalties greater than $1,000 but less than or equal to $10,000'' (i.e., increases are rounded in multiples of $1,000), even though section 5 penalties had been increased to $11,000 in 1996.

The rounding categories, however, do not expressly rely upon or refer to the original statutory amounts of the penalties, nor is the Commission aware of any legislative history to support a retroactive reading of ''penalties'' once the original statutory penalty amount has been increased. Rather, in calculating increases, the statute expressly refers to the increase since the penalties were last set ''or adjusted'' by law. *See* FCPIAA Sec. 5(b) (defining cost-of-living adjustment). Thus, for example, increases in the penalty for a violation of section 5 of the FTC Act (i.e., $11,000) must be rounded in multiples of $5,000 (rather than multiples of $1,000, as when the penalty was only $10,000).

Applying the rounding rules this way, the Commission has determined that the relevant increase in the Consumer Price Index (CPI) since the last adjustment in 1996 is not large enough yet to authorize the recently published increased in the civil penalty amounts within the Commission's jurisdiction.[1] Accordingly, the Commission has determined that the civil penalty amounts in Commission Rule 1.98, 16 CFR 1.98, as last adjusted in 1996, should remain unchanged for now. This determination does not affect the previously published rule amendments to include civil penalties for Recycled Oil Rule violations, which were inadvertently omitted from the 1996 adjustment. The Commission is re-publishing its final rule amendments to preserve these conforming amendments while making the civil penalty corrections discussed earlier.

These procedural amendments are exempt from the notice-and-comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(B). The requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

List of Subjects

16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

16 CFR Part 311

Energy conservation, Labeling, Recycled oil, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapters A and C, of the Code of Federal Regulations, as follows:

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART 1—GENERAL PROCEDURES

1. Revise the title of subpart L to read as follows:

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended by the Debt Collection Improvement Act of 1996

2. Revise the authority for subpart L to read as follows:

Authority: 28 U.S.C. 2461 note.

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following civil penalty amounts apply to violations occurring after November 20, 2000:

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$11,000;

(b) Section 11(*1*) of the Clayton Act, 15 U.S.C. 21(*1*)—$5,500;

(c) Section 5(*1*) of the FTC Act, 15 U.S.C. 45(*1*)—$11,000;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$11,000;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$11,000;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$110;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$110;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—$110;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$110;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$110;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$110;

((*l*) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b)—$5,500 and $11,000, respectively; and

(m) civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

4. The authority for part 311 continues to read as follows:

Authority: 42 U.S.C. 6363(d).

5. Amend § 311.6 by revising the last sentence to read as follows:

§ 311.6 3 Prohibited acts.

* * * Violations will be subject to enforcement through civil penalties (as adjusted for inflation pursuant to § 1.98 of this chapter), imprisonment, and/or injunctive relief in accordance with the enforcement provisions of Section 525 of the Energy Policy and Conservation Act (42 U.S.C. 6395).

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–29469 Filed 11–17–00; 8:45 am]

BILLING CODE 6750–01–M

[1] For adjustment purposes, inflation is determined by calculating the percentage by which the June CPI for the calendar year preceding the adjustment (166.2 in 1999) exceeds the June CPI for the year when the last adjustment was made (156.7 in 1996). *See* FCPIAA 5(b). Thus, the relevant inflation increase if 6.1% (not the figure previously stated by the Commission). In any event, this amount is not yet large enough to justify the inflation increases authorized by the statute's rounding rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 00N–1596]

Uniform Compliance Date for Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 2004, as the uniform compliance date for food labeling regulations that are issued between January 1, 2001, and December 31, 2002. FDA periodically announces uniform compliance dates for new food labeling requirements to minimize the economic impact of label changes. On December 23, 1998, FDA established January 1, 2002, as the uniform compliance date for food labeling regulations that issued between January 1, 1999, and December 31, 2000.

DATES: This rule is effective November 20, 2000. Submit written comments by February 5, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Louis B. Brock, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4273.

SUPPLEMENTARY INFORMATION: FDA periodically issues regulations requiring changes in the labeling of food. If the effective dates of these labeling changes were not coordinated, the cumulative economic impact on the food industry of having to respond separately to each change would be substantial. Therefore, the agency periodically has announced uniform compliance dates for new food labeling requirements (see e.g., the

Federal Registers of October 19, 1984 (49 FR 41019), December 24, 1996 (61 FR 67710), December 27, 1996 (61 FR 68145), and December 23, 1998 (63 FR 71015)). Use of a uniform compliance date provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. This policy serves consumers' interests as well because the cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher prices.

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 is not required.

FDA has examined the economic implications of this final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects). Executive Order 12866 classifies a rule as ''economically significant'' if it meets any one of a number of specified conditions including having an annual effect on the economy of $100 million, adversely affecting some sector of the economy in a material way, or adversely affecting jobs or competition. A regulation is considered a ''significant'' regulatory action under Executive Order 12866 if it raises novel legal or policy issues. FDA finds that this final rule is neither an economically significant rule nor a significant regulatory action as defined by Executive Order 12866. In addition, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the administration of OMB has determined that this final rule is not a major rule for purposes of congressional review. The establishment of a uniform compliance date does not impose either costs or benefits. For future labeling requirements, FDA will assess the costs and benefits of the uniform compliance date as well as the option of setting other dates.

Because FDA has issued this final rule without first publishing a general notice of proposed rulemaking, a final regulatory analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601–612). Nonetheless, the uniform compliance date does not impose any burden on small entities. The agency will assess the costs and benefits of setting alternative dates as part of the regulatory flexibility analyses of future labeling regulations.

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

This action is not intended to change existing requirements for compliance dates contained in final rules published before January 1, 2001. Therefore, all final FDA regulations published in the **Federal Register** before January 1, 2001, will still go into effect on the date stated in the respective final rule.

The agency generally encourages industry to comply with new labeling regulations as quickly as feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

In rulemaking that began with publication of a proposal on April 15, 1996 (61 FR 16422), and ended with a final rule on December 24, 1996 (61 FR 67710), FDA provided notice and an opportunity for comment on the practice of establishing uniform compliance dates by issuance of a final rule announcing the date. Receiving no comments objecting to this practice, FDA finds any further rulemaking unnecessary for establishment of the uniform compliance date. Nonetheless, under 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether this uniform compliance date should be modified or revoked.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this final rule by February 5, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. After its review of any comments received to this final rule, FDA will either publish a document providing its conclusions concerning the comments or will initiate notice and comment rulemaking to modify or revoke the uniform compliance date established by this final rule.

The new uniform compliance date will apply only to final FDA food labeling regulations that require changes in the labeling of food products and that publish after January 1, 2001, and before December 31, 2002. Those regulations will specifically identify January 1, 2004, as their compliance date. All food products subject to the January 1, 2004, compliance date must comply with the appropriate regulations when initially introduced into interstate commerce on or after January 1, 2004. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2004, the agency will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

Dated: November 8, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29538 Filed 11–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8907]

RIN 1545–AX73

Application of the Anti-Churning Rules for Amortization of Intangibles in Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the amortization of certain intangible property under section 197. Specifically, the regulations apply the anti-churning rules under section 197(f)(9) to partnership distributions resulting in basis adjustments under sections 732(b) and 734(b). This document also amends certain parts of the previously issued

final regulations (TD 8865), including those parts that relate to the amount of a basis adjustment under sections 732(d) and 743(b) that is subject to the anti-churning rules under section 197(f)(9). The final regulations interpret the provisions of section 197(f)(9), reflecting changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), and affect taxpayers who acquired intangible property after August 10, 1993, or made a retroactive election to apply OBRA '93 to intangibles acquired after July 25, 1991.

DATES: *Effective Date:* These regulations are effective November 20, 2000.

Applicability Date: These regulations apply to distributions or transfers occurring on or after November 20, 2000. However, a taxpayer may choose, on a transaction-by-transaction basis, to apply these regulations to property acquired (or partnership transactions occurring) after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T) and before November 20, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Sotos or Robert G. Honigman at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends § 1.197–2 of the Income Tax Regulations (26 CFR Part 1) to provide additional rules regarding the application of section 197(f)(9) to partnership transactions under sections 732(b) and 734(b). This document also amends certain provisions of the final regulations under section 197 issued on January 25, 2000 (TD 8865, 65 FR 3820).

On January 16, 1997, the IRS published proposed regulations (REG–209709–94) in the **Federal Register** (62 FR 2336) under sections 167(f) and 197, including the anti-churning rules in section 197(f)(9). In commenting on the proposed regulations, some practitioners noted that additional guidance was needed regarding how the special anti-churning rule of section 197(f)(9)(E) should apply to increases in the basis of partnership property under sections 732, 734, and 743. In response to these comments, the IRS published proposed regulations (REG–100163–00) in the **Federal Register** (65 FR 3903) on January 25, 2000, providing rules for determining the portion of a basis adjustment under sections 732(b) and 734(b) that will be subject to the anti-churning rules. Final regulations (TD 8865, 65 FR 3820) (referred to herein as the ''existing regulations'') were issued at the same time as the proposed regulations. The existing regulations provide guidance regarding the application of the anti-churning rules to basis adjustments under sections 732(d) and 743(b) and to remedial allocations of deductions for amortization of section 197(f)(9) intangibles (i.e., goodwill and going concern value that was held or used at any time during the period beginning on July 25, 1991, and ending on August 10, 1993 (unless an election was made under § 1.197–1T) and any other section 197 intangible that was held or used during such period and was not depreciable or amortizable under prior law).

The IRS received no requests to speak at a public hearing that was scheduled for May 24, 2000, and consequently the IRS canceled the hearing. Written comments were received in response to the notice of proposed rulemaking. The comments received and revisions made are discussed below.

Explanation of Provisions and Summary of Comments

A. In General

Section 197(f)(9)(E) provides that, in applying the anti-churning rules for basis adjustments under sections 732, 734, and 743, determinations are made at the partner level, and each partner is treated as having owned and used such partner's proportionate share of the partnership's assets. With respect to basis adjustments under sections 732(b) and 734(b), this rule requires taxpayers and the IRS to analyze transactions that actually involve a distribution of property from the partnership to a partner as deemed transactions involving transfers of property directly among the partners. In applying the anti-churning rules to basis adjustments under section 732(b), the distributee partner is deemed to acquire the distributed intangible directly from the continuing partners of the distributing partnership. Similarly, in applying the anti-churning rules to basis adjustments under section 734(b), the continuing partners are deemed to acquire interests in the intangible that remains in the partnership from the partner who received a distribution (giving rise to the section 734(b) basis adjustment) of property other than the intangible.

Consistent with this view of the transactions, § 1.197–2(g)(3) of the existing regulations provides that the increase in the basis of a distributed section 197(f)(9) intangible under section 732(b) or the increase in the partnership's basis of an undistributed section 197(f)(9) intangible under section 734(b) is treated as a new intangible acquired as a result of the distribution. The rules for determining whether such basis adjustments are subject to the anti-churning rules under section 197(f)(9) operate by reference to the facts surrounding each partner's acquisition of its interest in the partnership, the relation of the distributee partner and the continuing partners, and the portion of the intangible that is allocable to such partners. Although the specific rules are not phrased in terms of analyzing a deemed transfer of a portion of an intangible between the distributee partner and the continuing partners, the effect of the rules is to analyze such a deemed transfer.

Under the proposed regulations, it first is necessary to determine whether the portion of an intangible that a partner is deemed to acquire as a result of the distribution was subject to the anti-churning rules immediately prior to the deemed transfer. Even if the intangible is a section 197(f)(9) intangible with respect to the partnership, for purposes of analyzing a deemed transfer, the partner's share of the intangible is treated as not being subject to the anti-churning rules if the intangible was held by the partnership at the time that the partner (or predecessor partner) acquired the partnership interest, and the partner (or predecessor partner) would have been able to amortize the intangible had the partner (or predecessor partner) directly acquired the intangible under the same circumstances that the partner (or predecessor partner) acquired the partnership interest. If a partner's share of the intangible is treated as not being subject to the anti-churning rules for this purpose, then the anti-churning rules would not apply to the portion of the basis adjustment that is attributable to the deemed transfer.

If the partner's share of the intangible was treated as being subject to the anti-churning rules immediately prior to the deemed transfer, it is necessary, as a further step, to determine whether the deemed transferor and transferee are related. If the partners are not related, the anti-churning rules would not apply to the basis adjustment that gives rise to the deemed transfer.

The proposed regulations also contain rules for measuring the portion of the intangible that is deemed to be transferred by the relevant partners in the deemed transactions together with certain additional rules designed to prevent circumvention of the anti-churning rules through the use of partnerships.

B. Continuing Partner's Share of Basis Adjustment Under Section 734(b)

The proposed regulations provide that, for purposes of analyzing basis adjustments under section 734(b), a continuing partner's share of a basis increase is equal to (1) the total basis increase allocable to the intangible; multiplied by (2) a fraction equal to (A) the unrealized appreciation from the intangible that would have been allocated to the continuing partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction; over (B) the total unrealized appreciation from the intangible that would have been realized by the partnership if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

One commentator stated that, under the proposed regulations, the fraction for determining a continuing partner's share of the basis adjustment under section 734(b) could lead to inappropriate results in some circumstances. For example, if a partner contributes to a partnership a section 197(f)(9) intangible which has a fair market value that exceeds its tax basis at the time of the contribution, and, at some later date, in an unrelated transaction, the contributing partner is redeemed from the partnership resulting in a section 734(b) adjustment to the intangible, the proposed regulations could determine that the entire adjustment under section 734(b) is allocable to the contributing partner (assuming that the basis adjustment does not exceed the section 704(c) gain attributable to the property), even though the contributing partner is no longer a partner in the partnership.

Treasury and the IRS agree that the fraction used in the proposed regulations can lead to inappropriate results. Furthermore, as discussed below, particularly in situations involving intangibles with built-in gain that are contributed to a partnership, an approach relying on a partner's share of appreciation in an intangible (whether measured before or after a distribution) to determine the partner's share of a basis increase under section 734(b) appears to be inconsistent with the purpose of section 197(f)(9)(E).

Positive basis adjustments under section 734(b) can be analyzed from two different perspectives: gain eliminated or deductions created. Under § 1.755–1(c)(2)(i), positive section 734(b) basis adjustments are allocated first to appreciated properties within a class so as to eliminate the built-in gain (and hence section 704(c) gain) with respect to such properties. In analyzing gain on disposition of the asset, the basis adjustment inures first to the benefit of the contributing partner since it will reduce the section 704(c) gain recognized by the partner upon the disposition of the asset by the partnership. However, in analyzing depreciation or amortization deductions attributable to the asset, the basis will inure first to the non-contributing partners to the extent that they were being denied such deductions as a result of the ceiling rule. In determining the portion of an intangible that a partner is deemed to receive from the distributee partner for purposes of applying the anti-churning rules, it seems that a rule focused on who would receive a deduction as a result of a section 734(b) basis adjustment, rather than who would avoid gain, is more appropriate.

A partner's proportionate share of partnership capital generally serves as a good proxy for estimating a partner's share of deductions. Accordingly, for purposes of determining a continuing partner's share of a section 734(b) basis adjustment, the fraction utilized in the final regulations compares a continuing partner's post-distribution capital account as determined under section 704(b) and § 1.704–1(b)(2)(iv) to the aggregate of all of the continuing partners' post-distribution capital accounts (or if the partnership does not maintain capital accounts in accordance with § 1.704–1(b)(2)(iv), the fraction is determined by reference to the partner's overall interest in the partnership under § 1.704–1(b)(3)). Treasury and the IRS believe this change best reflects how deductions are likely to flow from the intangible asset in a typical partnership arrangement.

C. Amortization of Section 197(f)(9) Intangible Where Some But Not All of the Basis Adjustment Under Section 734(b) Is Amortizable

The proposed regulations provide that taxpayers may use any reasonable method to determine amortization of a section 734(b) adjustment with respect to an intangible for book purposes, provided that the method does not permit any portion of the tax deduction for amortization attributable to the adjustment to be allocated to a partner who is subject to the anti-churning rules. Several commentators requested guidance as to what methods would be considered reasonable in situations where part, but not all, of a section 734(b) basis adjustment is attributable to an intangible that is subject to the anti-churning rules.

In response to the comments, the final regulations contain an example illustrating one method for determining book amortization that will be considered reasonable under the regulations.

D. Adjustments Under Sections 743(b) and 732(d) Where the Transferor of the Partnership Interest Is Related to the Transferee

The existing regulations provide that the anti-churning rules apply with respect to positive basis adjustments under section 743(b) only if the person acquiring the partnership interest is related to the person transferring the partnership interest. One commentator pointed out that, even if the transferor partner is related to the transferee partner, there still may be situations where the section 743(b) adjustment should be amortizable by the transferee.

To illustrate the commentator's point, consider the following example: A partnership (PRS) with two partners, A and B, held an intangible subject to the anti-churning rules on August 10, 1993. The partnership has made a section 754 election. On June 1, 1995, A transfers his entire interest in PRS to C, an unrelated person. C has a positive section 743(b) basis adjustment with respect to the intangible that is not subject to the anti-churning rules. On April 30, 2000, C transfers his entire interest in PRS to D, a person related to C. C's section 743(b) basis adjustment disappears as a result of the transfer, and D obtains a new section 743(b) basis adjustment with respect to the intangible. According to the commentator, the ownership of the interest in PRS by C (a party unrelated to A) should permanently purge any taint with respect to a section 743(b) basis adjustment attributable to C's interest. The fact that D is related to C should not prevent D from amortizing the basis adjustment.

The commentator's suggestion is consistent with the aggregate approach in the regulations for adjustments under sections 732(b) and 734(b). Under § 1.197–2(h)(12)(ii) and (iv) of these final regulations, if a partner acquires an interest in a partnership from an unrelated partner after August 10, 1993, and after the partnership has acquired the section 197(f)(9) intangible, the partner will be treated as holding a portion of the intangible that is not subject to the anti-churning rules for purposes of analyzing subsequent deemed transfers relating to basis adjustments under sections 732(b) and 734(b). The existing regulations are amended to include similar provisions for purposes of analyzing the

application of the anti-churning rules with respect to basis adjustments under section 743(b).

The existing regulations pertaining to section 732(d) adjustments also are amended to coordinate those provisions with the change discussed above for section 743(b) adjustments. The amendment provides that the anti-churning rules do not apply to an increase in the basis of a section 197(f)(9) intangible under section 732(d) if, had an election been in effect under section 754 at the time of the transfer of the partnership interest, the distributee partner would have been able to amortize the basis adjustment made pursuant to section 743(b).

E. Modification of Rule Where a Partner Is or Becomes a User of a Partnership Intangible

Section 1.197–2(h)(12)(vi) of the proposed regulations provides a rule to prevent avoidance of the anti-churning rules where a partner subject to the anti-churning rules becomes or remains a user of the intangible after the basis of the intangible is adjusted with respect to another partner under section 732, 734, or 743. One commentator noted that § 1.197–2(h)(12)(vi) could apply if the partnership itself continues to use the intangible, at least where the deemed transferor of the intangible continues to own more than a 20 percent interest in the partnership, because the partner would be treated under the attribution rules as continuing to use the intangible by virtue of the partnership's use of the intangible. The commentator stated that such a result appears inconsistent with the policies underlying section 197(f)(9)(E), which ignore the existence of the partnership for purposes of anti-churning determinations with respect to basis adjustments under sections 732, 734, and 743. The commentator requested that the final regulations make clear that a partnership's continued use of an intangible would not invoke the rule of § 1.197–2(h)(12)(vi).

Consistent with this comment, § 1.197–2(h)(12)(vi) of these final regulations makes clear that the proscribed use must be by an anti-churning partner or related person other than the partnership. Attributed use of the intangible from the partnership to a partner will not cause this rule to apply.

F. Clarification With Respect to Remedial Allocations

Section 1.197–2(g)(4)(ii) of the existing regulations provides that ''if a partner contributes a section 197 intangible to a partnership and the partnership adopts the remedial allocation method for making section 704(c) allocations of amortization deductions, the partnership generally may make remedial allocations of amortization deductions with respect to the contributed section 197 intangible in accordance with § 1.704–3(d).'' Comments have been received expressing concern that, because no similar affirmative rule is contained in the anti-churning section of the regulations, if a contributing partner owns a greater than 20 percent interest in the partnership (and thus is considered related to the partnership), the rule allowing remedial allocations will not be available. While Treasury and the IRS believe that it was clear under the existing regulations that remedial allocations of amortization deductions could be made where the contributing partner is related to the partnership (as opposed to the non-contributing partners), an affirmative rule has been added to the anti-churning rules at § 1.197–2(h)(12)(vii)(B) in order to eliminate any doubt with respect to this issue.

In addition, the rule regarding the disallowance of remedials where a non-contributing partner is related to the contributing partner is amended in these final regulations to also cover situations where, as part of a series of related transactions that includes the contribution of the section 197(f)(9) intangible to the partnership, the contributing partner (or a related person) becomes or remains a direct user of the contributed intangible. Consistent with the analysis of remedials as being akin to a section 743(b) basis adjustment for the non-contributing partners, Treasury and the IRS believe that it is inappropriate for a non-contributing partner to obtain amortization deductions with respect to a portion of a contributed section 197(f)(9) intangible where the prior owner of the intangible becomes or remains a direct user of the intangible in connection with the contribution. See also section 197(f)(9)(A)(iii) and § 1.197–2(h)(12)(vi).

G. Rules for Determining When a Partnership Interest Is Treated as Being Acquired From a Related Person for Purposes of Analyzing Basis Adjustments Under Sections 732(b) and 734(b)

For purposes of analyzing deemed transfers resulting from basis adjustments under sections 732(b) and 734(b) in applying the anti-churning rules, the proposed regulations provide that if a partner contributed the distributed section 197(f)(9) intangible to the partnership, the partnership interest acquired by such partner is treated as not being described in § 1.197–2(h)(12)(ii)(A)(2) and (3) (for section 732(b) adjustments) or 1.197–2(h)(12)(iv)(A)(2) and (3) (for section 734(b) adjustments) (*i.e.*, the rules that allow a prior purchase of a partnership interest from an unrelated person to purge the partner's anti-churning taint in analyzing subsequent deemed transfers relating to basis adjustments). Accordingly, in order for a basis adjustment to a section 197(f)(9) intangible under section 732(b) or 734(b) to be amortizable, the deemed transfer (as a result of the basis adjustment) from the contributing partner must be to an unrelated partner.

Commentators indicated that this rule is unnecessary. According to the commentators, §§ 1.197–2(h)(12)(ii)(A)(2) and (3) and 1.197–2(h)(12)(iv)(A)(2) and (3), by their terms, cannot apply where the deemed transferor contributed the section 197(f)(9) intangible to the partnership. Treasury and the IRS agree with this comment. Accordingly, the final regulations omit the rule regarding a partner who contributes the distributed section 197(f)(9) intangible.

Special Analyses

It has been determined that the final regulations are not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are David J. Sotos and Robert G. Honigman of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.197–2 is amended by:

1. Revising paragraphs (h)(12)(ii), (h)(12)(iii), (h)(12)(iv), (h)(12)(v), and paragraph (h)(12)(vi)(A).

2. Removing ''; and'' at the end of paragraph (h)(12)(vi)(B)(*2*)(*ii*) and adding a period in its place.

3. Removing paragraph (h)(12)(vi)(B)(*3*).

4. Removing the first sentence of paragraph (h)(12)(vii)(B) and adding two new sentences in its place.

5. Removing the last two sentences of paragraph (iii) of *Example 27* in paragraph (k) and adding three sentences in their place.

6. Adding *Examples 28, 29, 30,* and *31* to paragraph (k).

7. Revising paragraphs (l)(1) and (l)(2).

The additions and revisions read as follows:

§ 1.197–2 Amortization of goodwill and certain other intangibles.

* * * * *

(h) * * *

(12) * * *

(ii) *Section 732(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) apply to any increase in the adjusted basis of a section 197(f)(9) intangible under section 732(b) to the extent that the basis increase exceeds the total unrealized appreciation from the intangible allocable to—

(*1*) Partners other than the distributee partner or persons related to the distributee partner;

(*2*) The distributee partner and persons related to the distributee partner if the distributed intangible is a section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, to the extent that—

(*i*) The distributee partner and related persons acquired an interest or interests in the partnership after August 10, 1993;

(*ii*) Such interest or interests were held after August 10, 1993, by a person or persons other than either the distributee partner or persons who were related to the distributee partner; and

(*iii*) The acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner (or persons related to the distributee partner) subsequently acquired such interest or interests; and

(*3*) The distributee partner and persons related to the distributee partner if the distributed intangible is a section 197(f)(9) intangible acquired by the partnership after August 10, 1993, that is not amortizable with respect to the partnership, to the extent that—

(*i*) The distributee partner and persons related to the distributee partner acquired an interest or interests in the partnership after the partnership acquired the distributed intangible;

(*ii*) Such interest or interests were held after the partnership acquired the distributed intangible, by a person or persons other than either the distributee partner or persons who were related to the distributee partner; and

(*iii*) The acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner (or persons related to the distributee partner) subsequently acquired such interest or interests.

(B) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(ii)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the relevant party made a valid retroactive election under § 1.197–1T.

(C) *Intangible still subject to anti-churning rules.* Notwithstanding paragraph (h)(12)(ii) of this section, in applying the provisions of this paragraph (h) with respect to subsequent transfers, the distributed intangible remains subject to the provisions of this paragraph (h) in proportion to a fraction (determined at the time of the distribution), as follows—

(*1*) The numerator of which is equal to the sum of—

(*i*) The amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section; and

(*ii*) The total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply; and

(*2*) The denominator of which is the fair market value of such intangible.

(D) *Partner's allocable share of unrealized appreciation from the intangible.* The amount of unrealized appreciation from an intangible that is allocable to a partner is the amount of taxable gain that would have been allocated to that partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

(E) *Acquisition of partnership interest by contribution.* Solely for purposes of paragraphs (h)(12)(ii)(A)(*2*) and (*3*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each partner's respective proportionate interest in the partnership.

(iii) *Section 732(d) adjustments.* The anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197(f)(9) intangible under section 732(d) if, had an election been in effect under section 754 at the time of the transfer of the partnership interest, the distributee partner would have been able to amortize the basis adjustment made pursuant to section 743(b).

(iv) *Section 734(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) do not apply to a continuing partner's share of an increase in the basis of a section 197(f)(9) intangible held by a partnership under section 734(b) to the extent that the continuing partner is an eligible partner.

(B) *Eligible partner.* For purposes of this paragraph (h)(12)(iv), eligible partner means—

(*1*) A continuing partner that is not the distributee partner or a person related to the distributee partner;

(*2*) A continuing partner that is the distributee partner or a person related to the distributee partner, with respect to any section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after August 10, 1993;

(*ii*) Such interest was held after August 10, 1993 by a person or persons who were not related to the distributee partner; and

(*iii*) The acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest; or

(*3*) A continuing partner that is the distributee partner or a person related to the distributee partner, with respect to any section 197(f)(9) intangible acquired by the partnership after August 10, 1993, that is not amortizable with respect to the partnership, to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after the partnership acquired the relevant intangible;

(*ii*) Such interest was held after the partnership acquired the relevant intangible by a person or persons who were not related to the distributee partner; and

(*iii*) The acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(iv)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the distributee partner made a valid retroactive election under § 1.197–1T.

(D) *Partner's share of basis increase*—(*1*) In general. Except as provided in paragraph (h)(12)(iv)(D)(*2*) of this section, for purposes of this paragraph (h)(12)(iv), a continuing partner's share of a basis increase under section 734(b) is equal to—

(*i*) The total basis increase allocable to the intangible; multiplied by

(*ii*) A fraction the numerator of which is the amount of the continuing partner's post-distribution capital account (determined immediately after the distribution in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv)), and the denominator of which is the total amount of the post-distribution capital accounts (determined immediately after the distribution in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv)) of all continuing partners.

(*2*) *Exception where partnership does not maintain capital accounts.* If a partnership does not maintain capital accounts in accordance with § 1.704–1(b)(2)(iv), then for purposes of this paragraph (h)(12)(iv), a continuing partner's share of a basis increase is equal to—

(*i*) The total basis increase allocable to the intangible; multiplied by

(*ii*) The partner's overall interest in the partnership as determined under § 1.704–1(b)(3) immediately after the distribution.

(E) *Interests acquired by contribution*—(*1*) *Application of paragraphs (h)(12)(iv)(B) (2) and (3) of this section.* Solely for purposes of paragraphs (h)(12)(iv)(B)(*2*) and (*3*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership.

(*2*) *Special rule with respect to paragraph (h)(12)(iv)(B)*(*1*) of this section. Solely for purposes of paragraph (h)(12)(iv)(B)(*1*) of this section, if a distribution that gives rise to an increase in the basis under section 734(b) of a section 197(f)(9) intangible held by the partnership is undertaken as part of a series of related transactions that include a contribution of the intangible to the partnership by a continuing partner, the continuing partner is treated as related to the distributee partner in analyzing the basis adjustment with respect to the contributed section 197(f)(9) intangible.

(F) *Effect of section 734(b) adjustments on partners' capital accounts.* If one or more partners are subject to the anti-churning rules under this paragraph (h) with respect to a section 734(b) adjustment allocable to an intangible asset, taxpayers may use any reasonable method to determine amortization of the asset for book purposes, provided that the method used does not contravene the purposes of the anti-churning rules under section 197 and this paragraph (h). A method will be considered to contravene the purposes of the anti-churning rules if the effect of the book adjustments resulting from the method is such that any portion of the tax deduction for amortization attributable to the section 734 adjustment is allocated, directly or indirectly, to a partner who is subject to the anti-churning rules with respect to such adjustment.

(v) *Section 743(b) adjustments*—(A) *General rule.* The anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197 intangible under section 743(b) if the person acquiring the partnership interest is not related to the person transferring the partnership interest. In addition, the anti-churning rules of this paragraph (h) do not apply to an increase in the basis of a section 197 intangible under section 743(b) to the extent that—

(*1*) The partnership interest being transferred was acquired after August 10, 1993, provided—

(*i*) The section 197(f)(9) intangible was acquired by the partnership on or before August 10, 1993;

(*ii*) The partnership interest being transferred was held after August 10, 1993, by a person or persons (the post-1993 person or persons) other than the person transferring the partnership interest or persons who were related to the person transferring the partnership interest; and

(*iii*) The acquisition of such interest by the post-1993 person or persons was not part of a transaction or series of related transactions in which the person transferring the partnership interest or persons related to the person transferring the partnership interest acquired such interest; or

(*2*) The partnership interest being transferred was acquired after the partnership acquired the section 197(f)(9) intangible, provided—

(*i*) The section 197(f)(9) intangible was acquired by the partnership after August 10, 1993, and is not amortizable with respect to the partnership;

(*ii*) The partnership interest being transferred was held after the partnership acquired the section 197(f)(9) intangible by a person or persons (the post-contribution person or persons) other than the person transferring the partnership interest or persons who were related to the person transferring the partnership interest; and

(*iii*) The acquisition of such interest by the post-contribution person or persons was not part of a transaction or series of related transactions in which the person transferring the partnership interest or persons related to the person transferring the partnership interest acquired such interest.

(B) *Acquisition of partnership interest by contribution.* Solely for purposes of paragraph (h)(12)(v)(A) (*1*) and (*2*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(v)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the transferee partner made a valid retroactive election under § 1.197–1T.

(vi) *Partner is or becomes a user of partnership intangible*—(A) *General rule.* If, as part of a series of related transactions that includes a transaction described in paragraph (h)(12)(ii), (iii), (iv), or (v) of this section, an anti-churning partner or related person (other than the partnership) becomes (or remains) a direct user of an intangible that is treated as transferred in the transaction (as a result of the partners being treated as having owned their proportionate share of partnership assets), the anti-churning rules of this paragraph (h) apply to the proportionate share of such intangible that is treated

as transferred by such anti-churning partner, notwithstanding the application of paragraph (h)(12)(ii), (iii), (iv), or (v) of this section.

* * * * *

(vii) * * *

(B) *Allocations where the intangible is not amortizable by the contributor.* If a section 197(f)(9) intangible was not an amortizable section 197 intangible in the hands of the contributing partner, a non-contributing partner generally may receive remedial allocations of amortization under section 704(c) that are deductible for Federal income tax purposes. However, such a partner may not receive remedial allocations of amortization under section 704(c) if that partner is related to the partner that contributed the intangible or if, as part of a series of related transactions that includes the contribution of the section 197(f)(9) intangible to the partnership, the contributing partner or related person (other than the partnership) becomes (or remains) a direct user of the contributed intangible. * * *

* * * * *

(k) * * *

Example 27. * * *

(iii) * * * However, A is an anti-churning partner under paragraph (h)(12)(vi)(B)(*2*)(*i*) of this section. As a result of the license agreement, A remains a direct user of the section 197(f)(9) intangible after the transfer to C. Accordingly, paragraph (h)(12)(vi)(A) of this section will cause the anti-churning rules to apply to the entire basis adjustment under section 743(b).

Example 28. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest prior to the effective date. (i) In 1990, A, B, and C each contribute $150 cash to form general partnership ABC for the purpose of engaging in a consulting business and a software manufacturing business. The partners agree to share partnership profits and losses equally. In 2000, the partnership distributes the consulting business to A in liquidation of A's entire interest in ABC. The only asset of the consulting business is a nonamortizable intangible, which has a fair market value of $180 and a basis of $0. At the time of the distribution, the adjusted basis of A's interest in ABC is $150. A is not related to B or C. ABC does not have a section 754 election in effect.

(ii) Under section 732(b), A's adjusted basis in the intangible distributed by ABC is $150, a $150 increase over the basis of the intangible in ABC's hands. In determining whether the anti-churning rules apply to any portion of the basis increase, A is treated as having owned and used A's proportionate share of partnership property. Thus, A is treated as holding an interest in the intangible during the transition period. Because the intangible was not amortizable prior to the enactment of section 197, the section 732(b) increase in the basis of the intangible may be subject to the anti-churning provisions. Paragraph (h)(12)(ii) of this section provides that the anti-churning provisions apply to the extent that the section 732(b) adjustment exceeds the total unrealized appreciation from the intangible allocable to partners other than A or persons related to A, as well as certain other partners whose purchase of their interests meet certain criteria. Because B and C are not related to A, and A's acquisition of its partnership interest does not satisfy the necessary criteria, the section 732(b) basis increase is subject to the anti-churning provisions to the extent that it exceeds B and C's proportionate share of the unrealized appreciation from the intangible. B and C's proportionate share of the unrealized appreciation from the intangible is $120 (2/3 of $180). This is the amount of gain that would be allocated to B and C if the partnership sold the intangible immediately before the distribution for its fair market value of $180. Therefore, $120 of the section 732(b) basis increase is not subject to the anti-churning rules. The remaining $30 of the section 732(b) basis increase is subject to the anti-churning rules. Accordingly, A is treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $120 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $30.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-third of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $120 = $60), over the fair market value of the distributed intangible ($180).

Example 29. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest after the effective date. (i) The facts are the same as in *Example 28*, except that B and C form ABC in 1990. A does not acquire an interest in ABC until 1995. In 1995, A contributes $150 to ABC in exchange for a one-third interest in ABC. At the time of the distribution, the adjusted basis of A's interest in ABC is $150.

(ii) As in *Example 28*, the anti-churning rules do not apply to the increase in the basis of the intangible distributed to A under section 732(b) to the extent that it does not exceed the unrealized appreciation from the intangible allocable to B and C. Under paragraph (h)(12)(ii) of this section, the anti-churning provisions also do not apply to the section 732(b) basis increase to the extent of A's allocable share of the unrealized appreciation from the intangible because A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by the partnership before A acquired the ABC interest. Under paragraph (h)(12)(ii)(E) of this section, A is deemed to acquire the ABC partnership interest from an unrelated person because A acquired the ABC partnership interest in exchange for a contribution to the partnership of property other than the distributed intangible and, at the time of the contribution, no partner in the partnership was related to A. Consequently, the increase in the basis of the intangible under section 732(b) is not subject to the anti-churning rules to the extent of the total unrealized appreciation from the intangible allocable to A, B, and C. The total unrealized appreciation from the intangible allocable to A, B, and C is $180 (the gain the partnership would have recognized if it had sold the intangible for its fair market value immediately before the distribution). Because this amount exceeds the section 732(b) basis increase of $150, the entire section 732(b) basis increase is amortizable.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-sixth of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $150 = $30), over the fair market value of the distributed intangible ($180).

Example 30. Distribution of section 197(f)(9) intangible contributed to the partnership by a partner.

(i) The facts are the same as in *Example 29*, except that C purchased the intangible used in the consulting business in 1988 for $60 and contributed the intangible to ABC in 1990. At that time, the intangible had a fair market value of $150 and an adjusted tax basis of $60. When ABC distributes the intangible to A in 2000, the intangible has a fair market value of $180 and a basis of $60.

(ii) As in *Examples 28* and *29,* the adjusted basis of the intangible in A's hands is $150 under section 732(b). However, the increase in the adjusted basis of the intangible under section 732(b) is only $90 ($150 adjusted basis after the distribution compared to $60 basis before the distribution). Pursuant to paragraph (g)(2)(ii)(B) of this section, A steps into the shoes of ABC with respect to the $60 of A's adjusted basis in the intangible that corresponds to ABC's basis in the intangible and this portion of the basis is nonamortizable. B and C are not related to A, A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by ABC before A acquired the ABC interest. Therefore, under paragraph (h)(12)(ii) of this section, the section 732(b) basis increase is amortizable to the extent of A, B, and C's allocable share of the unrealized appreciation from the intangible. The total unrealized appreciation from the intangible that is allocable to A, B, and C is $120. If ABC had sold the intangible immediately before the distribution to A for its fair market value of $180, it would have recognized gain of $120, which would have been allocated $10 to A, $10 to B, and $100 to C under section 704(c). Because A, B, and

C's allocable share of the unrealized appreciation from the intangible exceeds the section 732(b) basis increase in the intangible, the entire $90 of basis increase is amortizable by A. Accordingly, after the distribution, A will be treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $90 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $60.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-half of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($60) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($120 − $90 = $30), over the fair market value of the distributed intangible ($180).

Example 31. Partnership distribution causing section 734(b) basis adjustment to section 197(f)(9) intangible.

(i) On January 1, 2001, A, B, and C form a partnership (ABC) in which each partner shares equally in capital and income, gain, loss, and deductions. On that date, A contributes a section 197(f)(9) intangible with a zero basis and a value of $150, and B and C each contribute $150 cash. A and B are related, but neither A nor B is related to C. ABC does not adopt the remedial allocation method for making section 704(c) allocations of amortization expenses with respect to the intangible. On December 1, 2004, when the value of the intangible has increased to $600, ABC distributes $300 to B in complete redemption of B's interest in the partnership. ABC has an election under section 754 in effect for the taxable year that includes December 1, 2004. (Assume that, at the time of the distribution, the basis of A's partnership interest remains zero, and the basis of each of B's and C's partnership interest remains $150.)

(ii) Immediately prior to the distribution, the assets of the partnership are revalued pursuant to § 1.704–1(b)(2)(iv)(*f*), so that the section 197(f)(9) intangible is reflected on the books of the partnership at a value of $600. B recognizes $150 of gain under section 731(a)(1) upon the distribution of $300 in redemption of B's partnership interest. As a result, the adjusted basis of the intangible held by ABC increases by $150 under section 734(b). A does not satisfy any of the tests set forth under paragraph (h)(12)(iv)(B) and thus is not an eligible partner. C is not related to B and thus is an eligible partner under paragraph (h)(12)(iv)(B)(*1*) of this section. The capital accounts of A and C are equal immediately after the distribution, so, pursuant to paragraph (h)(12)(iv)(D)(*1*) of this section, each partner's share of the basis increase is equal to $75. Because A is not an eligible partner, the anti-churning rules apply to A's share of the basis increase. The anti-churning rules do not apply to C's share of the basis increase.

(iii) For book purposes, ABC determines the amortization of the asset as follows: First, the intangible that is subject to adjustment under section 734(b) will be divided into three assets: the first, with a basis and value of $75 will be amortizable for both book and tax purposes; the second, with a basis and value of $75 will be amortizable for book, but not tax purposes; and a third asset with a basis of zero and a value of $450 will not be amortizable for book or tax purposes. Any subsequent revaluation of the intangible pursuant to § 1.704–1(b)(2)(iv)(*f*) will be made solely with respect to the third asset (which is not amortizable for book purposes). The book and tax attributes from the first asset (*i.e.,* book and tax amortization) will be specially allocated to C. The book and tax attributes from the second asset (*i.e.,* book amortization and non-amortizable tax basis) will be specially allocated to A. Upon disposition of the intangible, each partner's share of gain or loss will be determined first by allocating among the partners an amount realized equal to the book value of the intangible attributable to such partner, with any remaining amount realized being allocated in accordance with the partnership agreement. Each partner then will compare its share of the amount realized with its remaining basis in the intangible to arrive at the gain or loss to be allocated to such partner. This is a reasonable method for amortizing the intangible for book purposes, and the results in allocating the income, gain, loss, and deductions attributable to the intangible do not contravene the purposes of the anti-churning rules under section 197 or paragraph (h) of this section.

(l) * * * (1) *In general.* This section applies to property acquired after January 25, 2000, except that paragraph (c)(13) of this section (exception from section 197 for separately acquired rights of fixed duration or amount) applies to property acquired after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T), and paragraphs (h)(12)(ii), (iii), (iv), (v), (vi)(A), and (vii)(B) of this section (anti-churning rules applicable to partnerships) apply to partnership transactions occurring on or after November 20, 2000.

(2) *Application to pre-effective date acquisitions.* A taxpayer may choose, on a transaction-by-transaction basis, to apply the provisions of this section and § 1.167(a)–14 to property acquired (or partnership transactions occurring) after August 10, 1993 (or July 25, 1991, if a valid retroactive election has been made under § 1.197–1T) and—

(i) On or before January 25, 2000; or

(ii) With respect to paragraphs (h)(12)(ii), (iii), (iv), (v), (vi)(A), and (vii)(B) of this section, before November 20, 2000.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 9, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

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DEPARTMENT OF LABOR

Office of the Secretary

Employment Standards Administration

Wage and Hour Division

29 CFR Parts 1 and 5

RIN 1215–AA94

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule an amendment to the regulations that govern the employment of ''helpers'' on federally-financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts (DBRA). Specifically, this document amends the regulations to incorporate the Wage and Hour Division's longstanding policy of recognizing helper classifications and wage rates only where their duties are clearly defined and distinct from those of journeyworker and laborer classifications in the area; the use of such helpers is an established prevailing practice in the area; and the term ''helper'' is not synonymous with ''trainee'' in an informal training program.

EFFECTIVE DATE: January 19, 2001.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0569. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule does not contain any new information collection requirements and does not modify any existing requirements. Thus, the rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995.

II. Background

Apart from the brief periods, as discussed below, when the suspended ''helper'' regulations were implemented, the longstanding practice of the Department of Labor (''DOL'' or ''the Department'') has been to allow the use of helper classifications on DBRA-covered construction projects only where (1) the duties of the helper are clearly defined and distinct from those of the journeyworker and laborer; (2) the use of such helpers is an established prevailing practice in the area; and (3) the term ''helper'' is not synonymous with ''trainee'' in an informal training program.

On May 28, 1982, Wage and Hour published revised final Regulations, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, and 29 CFR Part 5, Subpart A—Davis-Bacon and Related Acts Provisions and Procedures (47 FR 23644 and 23658, respectively), containing new provisions intended to allow contractors to expand their use of helpers on Davis-Bacon covered projects at wages lower than those paid to skilled journeyworkers.[1]

These regulations were challenged in a lawsuit brought by the Building and Construction Trades Department, AFL–CIO, and a number of individual unions. On December 23, 1982, the U.S. District Court for the District of Columbia Circuit held that the new helper regulations conflicted with the Davis-Bacon Act and enjoined DOL from implementing the regulations. *See Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.,* 553 F. Supp. 352 (D.D.C. 1982). On appeal, the U.S. Court of Appeals for the District of Columbia upheld the Department's authority to allow the increased use of helpers, concluding that the Secretary's regulatory definition was ''not clearly unreasonable.'' *Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.,* 712 F.2d 611, 630 (D.C. Cir. 1983), *cert. denied,* 464 U.S. 1069 (1983). However, the court struck down that part of the regulation that allowed for the issuance of a helper wage rate where helpers were only ''identifiable.'' *Id.* at 624.

On remand, the district court lifted the injunction as it applied to the helper definition, but maintained it as to the remaining helper regulations. The district court added that the Secretary ''may, however, submit to this Court reissued regulations governing the use of helpers, and if these regulations conform to the decision of the Court of Appeals, they will be approved.'' 102 CCH Labor Cases ¶ 34,648, p. 46,702 (D.D.C. 1984).

In accordance with the district court's order, DOL published in the **Federal Register** (52 FR 31366, August 19, 1987) proposed revisions to the helper regulations to add the requirement that helpers must prevail in an area in order to be recognized. The Department, on January 27, 1989, published a revised final rule governing the use of helpers on federal and federally assisted construction contracts subject to the Davis-Bacon and Related Acts (54 FR 4234).

On September 24, 1990, the district court vacated its injunction, and on December 4, 1990, Wage and Hour published a **Federal Register** notice implementing the helper regulations, effective February 4, 1991 (55 FR 50148).

In April 1991, Congress passed the Dire Emergency Supplemental Appropriations Act of 1991, Public Law 102–27 (105 Stat. 130), which was signed into law on April 10, 1991. Section 303 of Public Law 102–27 (105 Stat. 152) prohibited the Department from spending any funds to implement or administer the helper regulations as published, or to implement or administer any other regulation that would have the same or similar effect. In compliance with this directive, the Department did not implement or administer the helper regulations for the remainder of fiscal year 1991.

After fiscal year 1991 concluded and subsequent continuing resolutions expired, a new appropriations act was passed that did not include a ban restricting the implementation of the helper regulations. On January 29, 1992, Wage and Hour issued All Agency Memorandum No. 161, instructing the contracting agencies to include the helper contract clauses in contracts for which bids were solicited or negotiations were concluded after that date. On April 21, 1992, the U.S. Court of Appeals for the District of Columbia invalidated the regulation that prescribed a ratio of two helpers for every three journeyworkers for being without sufficient support in the record, but upheld the remaining helper provisions. *Building and Construction Trades Department, AFL–CIO* v. *Martin,* 961 F.2d 269 (D.C. Cir. 1992). To comply with this ruling, on June 26, 1992, Wage and Hour issued a **Federal Register** notice removing the invalidated text, 29 CFR 5.5(a)(4)(iv), from the Code of Federal Regulations. 57 FR 28776.

Subsequently, Section 104 of the Department of Labor Appropriations Act of 1994, Public Law 103–112, enacted on October 21, 1993, prohibited the Department of Labor from expending funds to implement or administer the helper regulations during fiscal year 1994. Accordingly, on November 5, 1993, Wage and Hour published a **Federal Register** notice (58 FR 58954) suspending the regulations governing the use of semi-skilled helpers on DBRA-covered contracts, and reinstating the Department's prior policy regarding the use of helpers. The Department of Labor Appropriations Act for fiscal year 1995 again barred the Department from expending funds with respect to the helper regulations (Section 102, Public Law 103–333). That prohibition extended into fiscal 1996 as a result of several continuing resolutions. There was no such prohibition in the Department of Labor's Appropriations Acts for fiscal 1996 and 1997, Public Law 104–134, enacted on April 26, 1996, and Public Law 104–208, enacted on September 30, 1996.

On August 2, 1996, Wage and Hour published in the **Federal Register** (61 FR 40366) a proposal to continue to suspend the implementation of the helper regulations while additional rulemaking procedures were undertaken to determine whether further amendments should be made to those regulations. On December 30, 1996, a

[1] The following four new provisions were promulgated:

- A new definition of the term ''helper,'' allowing a helper's duties to overlap with those of a journeylevel worker: ''A *helper* is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.'' [29 CFR 5.2(n)(4), 47 FR 23667.]
- A provision allowing a helper classification to be included in the wage determination if it was an ''identifiable'' local practice. 29 CFR 1.7(d), 47 FR 23655.
- A provision limiting the number of helpers to two for every three journeyworkers. 29 CFR 5.5(a)(4)(iv), 47 FR 23670.
- A provision allowing the addition of helper classifications on contracts containing wage determinations without helper classifications, where helpers are utilized in the area. 29 CFR 5.5(a)(1)(ii)(A), 47 FR 23688.

final rule was published in the **Federal Register** (61 FR 68641) continuing the suspension. Pursuant to that final rule, the November 5, 1993 suspension of the helper regulations continues in effect until Wage and Hour either (1) issues a final rule amending (and superseding) the suspended helper regulations; or (2) determines that no further rulemaking is appropriate, and issues a final rule reinstating the suspended regulations.

By decision dated July 23, 1997, the U.S. District Court for the District of Columbia upheld the Department's December 30, 1996 final rule continuing the suspension of the helper regulations until the completion of rulemaking proceedings. *Associated Builders & Contractors, Inc.* v. *Herman,* C.A. No. 96–1490, 1997 WL 525268 (D.D.C. July 23, 1997).

The Department, by Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on April 9, 1999 (64 FR 17442), proposed for public comment an amendment to the regulations that would reflect the longstanding policy of recognizing helpers as a distinct classification on DBRA-covered work only where Wage and Hour determines that (1) the duties of the helpers are not performed by other classifications in a given area, *i.e.,* the duties of the helper are clearly defined and distinct from those of the journeyworker and laborer; (2) the use of such helpers is an established prevailing practice in the area; and (3) the term ''helper'' is not synonymous with ''trainee'' in an informal training program.

In addition to the proposed rule, the Administrator also presented for comment the reasons the Department had concluded that the suspended rule should not be implemented, as well as the various other alternatives that had been considered by the Department: (1) Add a ratio requirement to the suspended helper definition; (2) change the ''helper'' definition to emphasize the semi-skilled nature of the classification; (3) define ''helpers'' based on the Bureau of Labor Statistics, Occupational Employment Statistics (OES) Dictionary of Occupations, which focuses on unskilled duties and the worker's interaction with journeylevel craft workers; and (4) explicitly delineate the semi-skilled tasks performed by each helper classification. The Administrator also presented for comment an Economic Impact Analysis comparing the economic costs of the proposed rule governing the use of helpers under the DBRA to those under the suspended rule and the other alternatives considered by DOL, and a Regulatory Flexibility Analysis.

The Department received 23 responses to the NPRM. These included 18 responses providing substantive comments, one with no comments, and four requesting an extension of the comment period. Comments were received from three groups of Congressional Representatives: Representatives Charlie Norwood, Bill Goodling, Cass Ballenger, John Boehner, Peter Hoekstra, Buck McKeon, and Ron Paul; Representatives William L. Clay, Major R. Owens, and James E. Clyburn; and Representatives Jan Schakowsky and Anthony Weiner. Comments were also submitted by six contractor associations: The Associated General Contractors, Inc. (AGC); the Associated Builders and Contractors, Inc. (ABC); the Small Business Survival Committee (SBSC); the Associated Prevailing Wage Contractors, Inc. (APWC); the AGC of Texas (Highway, Heavy, Utilities and Industrial Branch); and the Mechanical Electrical Sheet Metal Alliance (MESMA), which is a coalition of members of the Mechanical Contractors Association of America (MCAA), the National Electrical Contractors Association (NECA) and the Sheet Metal and Air Conditioning Contractors National Association (SMACNA).

Also submitting comments were three union organizations and a union-contractor group: The Building and Construction Trades Department, AFL–CIO (Building Trades); the Laborers' International Union of North America (LIUNA); the International Brotherhood of Electrical Workers (IBEW); and the National Joint Apprenticeship and Training Committee for the Electrical Industry (NAJTC), which was jointly created by the IBEW and NECA.

The Texas Department of Transportation (TxDOT) commented on the proposal, as did two academic sources: A.J. Thieblot, Ph.D., Adj. Prof., University of Baltimore and the Regulatory Studies Program, Mercatus Center, George Mason University, Wendy L. Gramm, Director. Comments were also provided by two individual companies, Halliburton/Kellog Brown & Root (through in-house counsel) and Elevator Control Service (Elcon).

Finally, two elevator contractors' associations (the National Association of Elevator Contractors and the National Elevator Industry, Inc.) and two elevator contracting companies (Quality Elevator Co. and Barbee Curran Elevator Co., Inc.) requested an extension of the comment period. Requests for extension of time were not granted.

III. Comments and Analysis

In the NPRM, the Department proposed not to implement the suspended ''semi-skilled'' helper rule, but instead, to issue a rule reflecting the current, longstanding practice of recognizing helpers only where they are a separate and distinct class with clearly defined duties. The Department also provided therein a detailed explanation of the problems it identified with respect to the suspended helper definition, as well as a discussion of other alternatives for identifying helpers that were considered.

As explained in the NPRM, the Department had preliminarily concluded that the suspended rule was not capable of being administered and enforced effectively in accordance with the goals and requirements of the Davis-Bacon Act, especially in view of the court-ordered abandonment of the ratio provision. The Department stated that the suspended rule is problematic because it represents a sharp departure from the Department's traditional practice of identifying job classifications based on the duties performed by such classifications. The suspended helper definition is unique in that it allows the determination of a Davis-Bacon classification based on subjective standards—the worker's skill level (''semi-skilled'') and the existence of work-site supervision. Furthermore, the Department noted that the definition is internally inconsistent in that the examples given of the types of assistance the helper might provide to a journeyworker are not semi-skilled, but rather are largely unskilled duties commonly performed by laborers. The Department also stated that the requirements that the helper be ''semi-skilled'' and work under the supervision of a journeyworker are vague and would provide little assistance in enforcement.

The Department reasoned that, because the suspended rule allows the duties of a helper to overlap with those of both journeyworkers and laborers and provides no readily ascertainable means for distinguishing helpers from other classifications, contractors would find it difficult to determine whether they were in compliance and the Department in turn would find it difficult to enforce the regulation. Additionally, the Department expressed concern that the ambiguities in the suspended rule would make it difficult to prevent unscrupulous contractors from intentionally reclassifying large numbers of both journeyworkers and laborers as helpers when they work on DBRA projects, thus undermining locally prevailing wages for construction job classifications. The Department indicated that this is an even greater concern now that there is

no longer any numerical limitation to using helpers on DBRA projects.

The Department also concluded that there seemed to be no generally accepted meaning for the term ''helper'' in the construction industry, and therefore there was reason to believe that the definition in the suspended rule did not in fact represent industry practice. For this reason, the Department was concerned that it would be difficult to conduct meaningful wage surveys and, therefore, specifically requested that commenters submit evidence regarding how helpers are in fact used.

Wage data collected by the Department during the implementation period provided further support for the Department's decision to reconsider the advisability of implementing the suspended rule. A key underpinning of the helper rule at the time it was proposed was the notion that helper use is widespread in construction in the private sector. According to the preamble to the proposed rule published in 1987, the Secretary projected that helpers would prevail in two-thirds to 100% of all craft classifications.[2] The wage survey data submitted to the Department during the implementation period, though admittedly limited in quantity and geographic scope, indicated to the Department that use of helpers might not be as widespread as previously thought. This led the Department to examine other available data sources in order to reassess its previous assumption that helper use is widespread.

The Department also became concerned, as a secondary matter, that the suspended rule might have a negative impact on apprenticeship and training by lessening the incentive for contractors to employ apprentices and trainees participating in formal programs.

After a full and careful review of the suspended rule, as well as a number of alternative approaches, the Department decided to propose for implementation the duties-based approach to recognizing helpers, which reflects longstanding policy. As discussed in the NPRM, it is the Department's view that this approach is more consistent with the intent of the Davis-Bacon Act to assure that workers employed on federal and federally-assisted construction work are paid at least the wages paid to workers doing similar work on similar construction in the area. The Department also stated in the NPRM that this approach, in sharp contrast to that under the suspended rule, would provide an objective basis for administration and enforcement of helper use, as well as clear criteria to facilitate compliance.

The following is a summary and analysis of the comments received as they relate to the proposed regulation, the alternatives considered, the problems identified by the Department with respect to the suspended rule, and the Department's analysis and conclusions concerning the proposed rule set forth in the NPRM. Each submission has been thoroughly reviewed and each comment has been carefully considered.

Problems With the Suspended Helper Definition

1. The Suspended Helper Definition Would Be Difficult To Administer and Enforce

The Building Trades commented that the suspended rule would be unenforceable because it is simply too difficult to distinguish a helper from a journeylevel worker on a job site. The Building Trades stated that, if contractors and subcontractors were permitted to assign helpers to perform the tasks of any and all classes of laborers and mechanics at less pay, as the suspended definition would allow, the requirement in the Davis-Bacon Act that wages be based on ''corresponding classes'' would effectively be read out of the statute. The AGC, the ABC, and Dr. Thieblot, on the other hand, stated in their respective comments that the Department should be able to identify helper classes through area practice surveys as easily as it differentiates among the various trade classifications.

The Department believes that it is much more difficult to identify a helper classification under the suspended rule, than to identify a craft or laborer classification under the traditional duties-based approach. Under DBRA, a laborer or mechanic is entitled to be paid the prevailing rate for the work performed according to the local area practice, and therefore, is classified based on the duties the worker performs. Because under the suspended definition, helpers may perform the duties of other classifications—both journeylevel workers and laborers—without any limitations other than that they be supervised by and assist a journeyworker, it would be extremely difficult for the Department to identify the work of a helper in any given area, both for enforcement and wage determination purposes.

Comments suggesting that the Department can simply examine prevailing practices to identify helpers provide no practical guidance for resolving the suspended rule's inherent definitional problems. Construction craft workers generally perform certain basic, core duties that are specific to their respective classifications and therefore, are more easily identifiable for both enforcement and wage determination purposes. For example, it is widely understood that carpenters use hammers, saws and other tools of the trade to construct structures made of wood. Area practice issues arise concerning gray areas, where in a particular locality certain types of duties may be performed by another craft as an adjunct to its core duties, or may be carved out as a separate classification altogether. Thus, in some areas, carpenters may install drywall, while in others it may be installed by a specialty classification referred to as ''drywall installers.'' An area practice survey can make this determination. But it is not necessary for Wage and Hour to conduct an area practice survey to determine the work of each and every classification. For example, an area practice survey would not be needed to determine whether, instead of building wood structures, carpenters install water pipes, because such work is part of the basic, core duties of a plumber. Conversely, helpers, under the suspended rule, cannot be identified under the duties-based approach because there is no generally accepted subset of duties performed by helpers that would distinguish the helper from other classifications.

LIUNA commented that the combination of the suspended rule's allowance of overlap with laborers' duties and the lower wages generally paid to helpers would result in either the displacement of laborers in favor of workers classified and paid at lower helpers' rates, or the performance by the existing laborer workforce of the same work at lower wage and fringe benefit rates—contrary to the purpose of the Davis-Bacon Act to prevent Federal construction from depressing locally prevailing wages. LIUNA observed that many of the work activities of certain construction laborer classifications are precisely the same as the potential helper duties specifically enumerated under the suspended rule. LIUNA noted, for example, that a wide variety of ''tender'' classifications, which are negotiated between the Laborers' local unions and construction employers throughout the country, include the

[2] The final rule stated, without quantification, that this percentage would be reduced to the extent that collectively bargained rates were found to prevail and did not provide for a helper classification. 54 FR 4234, 4242 (January 27, 1989).

same duties that would be performed by helpers under the suspended regulations.[3] Dr. Thieblot, however, stated that the fact that the suspended helper definition may include work that would otherwise be done by laborers should be of no more concern to the Department than the performance by ''tender'' classifications of work that could be done by laborers.

The Department believes that LIUNA's concerns on the overlap of helper duties with other existing laborer classifications under the suspended rule are valid. The Department also believes that the recognition of a wide variety of tender classifications under its current policy demonstrates the manner in which helper classifications will be recognized under the final rule. The Department under its current policy, and under the final rule, will issue rates for helper classifications where the duties they perform are distinct from those of other classifications, including the journeyworkers they assist and other laborer or tender classifications. Tender classifications recognized by the Department must meet these criteria. While tender classifications do perform laborer-type duties, their performance of such work must be prevailing in the locality, *i.e.,* more tenders than any other classification perform the work in question in that particular locality. In contrast, under the suspended rule, the *use* of helpers by contractors must be prevailing in the locality and the duties they perform is determined by area practice, but there is no requirement that their performance of certain duties be prevailing in relation to those performed by other classifications in the locality. Thus, the suspended rule would allow the duties of a helper to overlap with those of other classifications that prevail within the locality, possibly leading to the employment of helpers to perform the work of other classifications at lower wages. Because tender/helper classifications must perform distinct duties for which the tender/helper classifications prevails in the locality, the recognition of such classifications does not carry the same potential for abuse and, therefore, the undermining of prevailing wages associated with the use of helpers under the suspended rule.

The Department indicated in the NPRM that it does not believe that the suspended rule can be effectively enforced under the vague, subjective criteria of its definition. For instance, the Department stated in the NPRM that the suspended definition's failure to distinguish between ''semi-skilled'' and ''skilled'' workers presented the Department with a ''fundamental problem'' when it tried to develop enforcement guidelines. LIUNA commented that the suspended definition provides no guidance for distinguishing between a ''semi-skilled'' helper who uses tools of the trade, and a journeyworker with little experience. The ABC stated, on the other hand, that contractors have developed methods for recognizing differences between skilled and semi-skilled work and have implemented pay scales based on such differences. None of the commenters, however, has identified any methods or criteria used by contractors that would be helpful to the Department in distinguishing between skilled and semi-skilled work. Similarly, the AGC stated that contractors routinely make hiring decisions based on skill level and compensate craft workers based on their training and experience. The Department believes that these practices are reflective of the normal practice of non-union employers in many industries where workers within an occupation are paid a range of rates based on their training and experience. The Department does not believe that such a practice demonstrates the existence of separate classes of workers within the meaning of the Davis-Bacon Act.[4]

The AGC stated that whether a skilled worker would accept and perform a ''semi-skilled'' job as a helper is an irrelevant concern, because compliance should focus on ensuring that individuals are properly compensated for the work they actually perform. This point echoes one of the Department's main concerns which led it to reject the suspended helper rule in favor of the traditional duties-based approach under the proposed rule. Under the suspended rule, individuals classified as helpers, who may perform the work of both higher paid craft workers and laborers, would not be compensated based on the work they perform, but rather on their comparatively lower skill levels. Furthermore, the Department still does not believe it could draw the line effectively between semi-skilled and skilled work, especially given that, in today's construction market, skilled craft workers may perform a whole range of duties from unskilled to semi-skilled to skilled, and laborers often perform what may be considered semi-skilled work as well.

The Department also observed in the NPRM that the supervision aspect of the suspended helper definition would provide little assistance in distinguishing a helper from other classifications of workers. LIUNA agreed that supervision by a journeyworker is not a practical standard for distinguishing ''semi-skilled'' helpers from others on the work-site, because many classifications are supervised by other workers or supervisors. LIUNA stated that laborers, apprentices, trainees and lesser skilled journeyworkers all may work under the ''direction and supervision'' of other, more highly skilled journeyworkers. The AGC, on the other hand, stated that the definition of a helper does not need to ''indicate the nature or amount of direction that helpers must receive to distinguish them from others on a worksite,'' because this should be left to local prevailing practice. None of the commenters offered suggestions as to how, from a practical standpoint, the Department could determine local supervisory practices.

Nothing in the comments received by the Department contradicts its view that laborers and journeylevel construction workers, like helpers under the suspended rule, also may work under the ''direction and supervision'' of other journeyworkers. In the Department's experience, which is supported by LIUNA's comments, supervision on a construction worksite is often an amorphous concept, especially where it is performed by a ''team leader,'' and therefore, does not lend itself to objective evaluation. Thus, the Department continues to be of the opinion that supervision by a journeyworker is not a practical standard for distinguishing *semi-skilled* helpers from other classifications on the worksite.

The Department also stated in the NPRM that it believes the problems resulting from the suspended rule's

[3] LIUNA stated that the laborer's role as a ''tender'' or ''helper'' to other trades has a long history, as demonstrated by the American Federation of Labor's 1903 charter to LIUNA, which described the laborer's work as ''tending to masons, mixing and handling all materials used by masons (except stone setters), building of scaffolding for mason's plasters, building of centers for fire proofing purposes, tending to carpenters, tending to and mixing of all materials for plastering, whether done by hand or any other process, clearing of debris from buildings, scoring, underpinning and raising of old buildings * * *.'' LIUNA also stated that, although today the term ''tender'' is preferred over ''helper'' in describing laborers' support relationship to other craft workers, the two terms are interchangeable in the construction industry and that DOL's Davis-Bacon *General Wage Determinations* include ''literally hundreds of examples of 'tender' or 'helper' job titles (mason tender, plasterer tender, carpenter tender, plumbing tender, etc.) listed as part of the laborer classification.''

[4] See the recent decision of the Administrative Review Board in *Miami Elevator Company* and *Mid-American Elevator Company, Inc.,* ARB Case Nos. 98–086 and 97–145 (April 25, 2000), pp. 33–34.

definitional ambiguities are compounded by evidence that the term ''helper'' has multiple, quite different meanings within the construction industry. LIUNA stated that the examples of duties that a helper may perform, as listed in the suspended definition, are not ''semi-skilled,'' but rather include a range of skilled, semi-skilled, and unskilled duties commonly performed by other classifications. AGC, on the other hand, stated that many different craft classifications have multiple, quite different meanings within the construction industry, and that this is the primary reason that no standard definitions have ever been promulgated for craft classifications performing Davis-Bacon work.

While it is true, as discussed above, that craft classifications may have somewhat different meanings within the industry, craft classifications generally encompass certain well-recognized duties that are widely understood to be the core duties of the craft occupation. Thus, despite the occasional need for clarification regarding the prevailing classification used by contractors in an area for workers performing specialized work, the fundamental scope of work of most construction craft occupations is not usually in question.

In contrast, it appears to the Department, as demonstrated by the rulemaking record, that a helper classification can have various meanings and uses even within the same locality. For example, the APWC stated that helpers, in its view, ''are semi-skilled workers who work under the direction of and provide assistance to journeymen,'' whereas the AGC of Texas described the use of helpers in the State of Texas as ''allow[ing] construction contractors to utilize *unskilled* workers while teaching them a trade or skill through our on-the-job training programs.'' [Emphasis added]. Similarly, commenters on the proposed rule to continue the suspension of the helper regulations, variously characterized helpers as skilled workers who have not been trained in the full range of journeylevel work, short-term entry-level workers assisting journeyworkers in unskilled laborer duties, and longer-term specialized workers who perform a limited number of duties that overlap journeylevel workers. 61 FR 68646. In this regard, the Department, in the NPRM, invited commenters to submit further evidence regarding how helpers are in fact used by contractors, particularly any data regarding whether there is in fact a generally recognized definition of helpers that is capable of being objectively identified. No such data were submitted by the commenters. The Department therefore believes that it was correct in its view that no definition of helpers exists that could adequately reflect ''the actual and varied practice in the construction industry as a whole or even in any particular area.''

The Department also expressed its concern that Wage and Hour would not be able to conduct a meaningful wage determination process using the suspended definition of helpers in light of the likelihood that contractors responding to area wage surveys would ascribe very different meanings to the term ''helpers.'' Dr. Thieblot stated that surveying for helper rates presents no special difficulties since it is Wage and Hour's practice ''to accept the rates and job titles as submitted by the contractors who paid them, whatever those titles might be'' without analyzing job content. Dr. Thieblot stated, for example, that it should be no more difficult for Wage and Hour to determine if the job title ''mason's helper'' prevails in a given area, than to determine if the job title ''mason's tender'' prevails.

This comment highlights a common misunderstanding of the Department's wage determination process. Wage and Hour, in gathering wage data, does not automatically accept the job titles as submitted by reporting employers. Wage and Hour's experience in collecting wage data is that contractors may use different job titles for the same craft work. When faced with more than one name for the same type of work, Wage and Hour must determine whether the workers with the various job titles in question perform the same basic duties, in which case the data for such work will be combined for the purpose of determining the prevailing classification and issuing a single prevailing rate for the particular work performed. In other cases, Wage and Hour might determine that it is the prevailing practice in a certain area for workers under a more specific job title (*e.g.,* drywall hanger) to perform a subset of the duties of a more generalized craft (*e.g.,* carpenter), and thus issue a separate wage rate for the specific job title where the data indicate that the specialized classification prevails for such work in the area. Thus, Wage and Hour does not automatically accept job titles as submitted by employers, but rather analyzes job content, as appropriate, as part of the wage determination process.

The problem with gathering data for helper classifications differs significantly from the difficulty presented where workers in an area perform the same craft work, but under different job titles. A helper classification, even if referred to by many different names within the locality, could nonetheless be surveyed effectively if the duties performed by workers with the various job titles for a helper were distinct from those of other classifications and essentially the same under each title. The problem with identifying helpers during the wage determination process is that the term ''helper'' under the suspended rule can serve to describe a variety of workers performing many different types of work. The Department is additionally concerned that the suspended helper rule, which imposes upon the wage determination process a definition of a helper that was created by the Department, may not necessarily reflect the reality of how helpers are in fact utilized in any given locality. Some employers may classify workers performing the work of helpers under the suspended rule as journeylevel workers, craft workers, or semi-skilled workers, while still others may classify such workers as laborers, unskilled workers, or tenders. In this regard, the Department notes that several contractors surveyed in the processing of helper conformance requests during the period the suspended regulations were in effect indicated that they used the job title ''laborer'' for workers meeting the definition of ''helper'' under the suspended regulation. Thus, because their practices vary from each other and from the definition in the suspended rule, the Department continues to be of the view that contractors, when responding to Davis-Bacon wage surveys, would likely be inconsistent in how they classify workers as helpers. This in turn would raise questions regarding the reliability of any wage data received for a given locality concerning employment of helpers.

The SBSC acknowledged that the suspended helper rule is a break from the tradition under the DBRA of identifying and differentiating among job classifications on the basis of tasks performed by each classification. SBSC commented, however, that the Wage and Hour Division has an outdated construction mentality and that its complaints about the use of helpers suggest a hesitancy to modernize its views. SBSC's comments also questioned the Department's concern that helpers will replace laborers, stating that it is a misclassification to insist that helpers are laborers; it ''is the old class of laborer that has become suspect.'' SBSC's comments provide little practical guidance on how to create a definition of helpers that could

be effectively enforced consistent with the underlying intent of the DBRA. In addition, the substantial number of laborers reported in the wage surveys in the record, as well as the comments submitted by LIUNA in support of the interests of laborers in this rulemaking procedure, do not support SBSC's view that laborers no longer constitute a viable worker classification on Davis-Bacon covered construction.

The Mercatus Center acknowledged that the Department's enforcement and administrative concerns may be justified, but cautions that they must be balanced against the productivity and cost-saving benefits from the suspended definition of helpers. The Mercatus Center further noted that by proposing to eliminate the flexibility of a helper to perform the duties of other job classifications, the Department would eliminate one of the most important cost-saving features of the helper position. While the Department believes that cost-saving features are certainly desirable, they cannot be determinative where the approach in question (*i.e.,* the definition of helpers under the suspended rule) cannot be fairly and effectively administered in a manner consistent with the goals of the statute to protect prevailing wages for the corresponding classes of work performed. Indeed, one of the principal objectives of the Davis-Bacon Act was to set a floor on wages so that wages would not be reduced below the prevailing wage as a result of competitive bidding for Federal construction contracts.

The ABC stated that the absence of a significant number of complaints or incidents of abuse during the time the suspended rule was in effect should be viewed as evidence that the Department's stated concerns about enforcement difficulties are overstated. Neither the absence nor presence of complaints had a bearing on the Department's determination that the suspended helper rule cannot be administered and enforced effectively; rather, as explained in the NPRM, it was the difficulty encountered in attempting to develop effective enforcement guidelines during the implementation period that initially raised these concerns. The suspended helper regulations were in effect for too brief a period for the absence of complaints to be indicative of a lack of enforcement difficulties. Though the suspended rule had an implementation period of approximately 20 months, it was nearly a year after implementation before the helper provisions could begin to be included in DBRA-covered construction contracts, following changes to the Federal Acquisition Regulations and the Defense Acquisition Regulations. Thus, the suspended helper rule simply was not in force for a sufficient period of time to draw any conclusions from the number of complaints received during its application.

After carefully reviewing the comments, the Department is persuaded that the suspended rule cannot be effectively administered and enforced. The suspended rule provides no objective basis for distinguishing between helpers and other classifications, and furthermore is vague and internally inconsistent. Its effect, contrary to the intent of the statute, would be to allow contractors and subcontractors on DBRA projects to assign the duties of both craft workers and laborers to helpers who are paid at lower wage rates, with virtually the only restriction being that the worker receive some supervision. As a result, the Department remains concerned that implementation of the suspended rule would lead to many instances of intentional and unintentional misclassification of workers and potential abuse of the rule, which the Department would be unable to prevent or remedy. None of the comments submitted provided any information or arguments which alleviated these concerns.

Additionally, the Department believes it would not be able to collect meaningful, consistent wage data regarding use of helpers for wage determination purposes. The Department believes that the ambiguous language of the definition in the suspended rule would not give contractors adequate guidance and would lead to inconsistent wage reporting. Because there is no generally recognized practice regarding how helpers are used, contractors reporting wage data in accordance with the definition in the suspended rule in some instances probably would report as helpers workers whom they consider journeymen or laborers.

The court of appeals, in its review of the Department's original rulemaking concerning helpers, stated that its deference to the Secretary's choice of policy ''is properly near its greatest when his decision turns on the enforceability of various regulatory schemes.'' *Donovan,* 712 F.2d at 629. The Department has been unable to develop a method for determining whether workers classified as helpers have been correctly classified under the suspended rule, consistent with the fundamental statutory goal of preserving locally prevailing wages for construction job classifications. Since the rulemaking record does not demonstrate that the suspended rule is capable of practical and efficient administration and enforcement to achieve the statutory goals under DBRA, the Department must reject implementation of the suspended rule.

2. Helpers Are Less Widespread Than Previously Believed

As explained in the preamble to the proposed rule, the belief that a distinct class of ''helpers'' was in widespread use in the construction industry was a key assumption underlying the Department's development of the suspended helper regulation. 64 FR 17445. Although not a representative sample, the data submitted to the Department in the 78 surveys conducted during the brief period the suspended rule was in effect failed to substantiate that assumption. In its earlier rulemaking, the Department had projected that use of helpers would be found to be a prevailing practice in from two-thirds to 100 percent of all craft classifications surveyed, except where collectively bargained rates were found to prevail and did not provide for a helper classification. 52 FR 31366, 31369–70 (August 19, 1987); 54 FR 4234, 4242 (January 27, 1989). The Department's experience with the survey data collected in 1992 and 1993 during the brief time that the suspended regulations were in effect was quite different. In the 78 surveys conducted, the use of helpers prevailed in only 69, or 3.9 percent of the 1763 classifications issued, and only 48 of the 69 helper classifications, or 2.7 percent of the 1763 classifications, were based on the practices of non-union contractors and subcontractors. Furthermore, in only 20 of the 78 surveys conducted were any non-union helper classifications found to prevail.

The Economic Impact and Flexibility Analysis in the proposed rule also provided data showing that helpers were less widespread than previous analyses had assumed. The 1996 Current Population Survey (CPS), compiled and published by the Bureau of Labor Statistics (BLS) and the Bureau of the Census, shows that helpers constituted only 1.2 percent of total construction employment. Data from the Occupational Employment Statistics (OES) program showed that helpers comprised 8.7 percent of the total construction work force. Because OES does not contain a separate classification for construction laborer, and its definitions of the helper classifications appear to include laborers, the Department believes the OES overstates the use of helpers. For this reason, the Department developed

an alternative estimate, adjusting the OES data by utilizing the percentage of laborers in the CPS workforce. The adjusted OES data resulted in an estimate that helpers constituted 3.4 percent of the total construction workforce.

In their comments, the Building Trades stated that the Department's data on helper use are consistent with the 1996 Current Population Survey (CPS) compiled by BLS and the Bureau of the Census, which showed that helpers only account for 1.2 percent of total construction industry employment. The Building Trades believes that these data support its longstanding contention that the underlying purpose of the suspended helper regulation was not to reflect locally prevailing practices, but to ''artificially interject'' a non-prevailing classification of construction workers into Davis-Bacon covered projects as a means of undercutting prevailing wages.

The ABC questioned the appropriateness of the Department's consideration of whether the use of helpers in the construction industry is ''widespread.'' The ABC stated that the proper test for determining the existence of helper classifications under the statute is not whether the use of helpers is ''widespread,'' but rather whether it ''prevails.'' The Department acknowledges that a basic prerequisite to issuing wage rates for classifications under Davis-Bacon, including helper classifications, is a determination of whether such classifications and corresponding pay rates prevail in the particular locality where the project is to be performed. However, the Department believes its consideration of the overall extent of helper use in the construction industry, *i.e.,* whether helper use is ''widespread,'' is appropriate as part of a broad inquiry concerning the advisability of implementing the suspended regulations. As the Department stated in the NPRM, ''[t]he belief that a distinct class known as 'helpers' was in widespread use in the construction industry was a key assumption underlying the Department's development of the helper regulation.'' 64 FR 17445. It is appropriate for the Department to determine, before taking further regulatory action, if the original underlying assumption concerning the extent of helper use, which provided the impetus for the suspended rule, was borne out by the data collected during the period the regulations were in effect, or by any other more recent, relevant data available to the Department. The Department believes this is a particularly significant consideration where there is so little consensus on a definition of helpers or how helpers are used.

Several commenters expressed their belief that the Department has underestimated the prevalence of helpers in the construction industry. Representative Norwood and the congressmen who joined in his comments state that ''[o]ver 75 percent of all construction in the private sector are performed by contractors who use semi-skilled helpers. One study found that on a given open-shop job, 35–50 percent of the workers in each craft are likely to be helpers.'' The source for these data was not identified, and therefore, the Department is unable to weigh this information against the data already available to the Department concerning the prevalence of helpers. These data, furthermore, do not indicate to what extent helper classifications actually prevail in the construction industry.

The AGC stated that more recent BLS survey data contradict the Department's conclusions regarding employment of helpers. In support, the AGC cites the NCS test surveys discussed above for Jacksonville and Tucson, which, according to the AGC, showed that helpers comprise 13.6 percent and 14.8 percent, respectively, of the total number of construction craft workers in those two localities.

The AGC is referring to four fringe benefit pilot surveys in Tucson, Arizona; Jacksonville, Florida; Salt Lake City, Utah; and Toledo, Ohio, which BLS conducted pursuant to its National Compensation Survey (NCS) program to test the feasibility of collecting detailed fringe benefit data for occupations within the construction industry. In these surveys, helpers [5] constituted 9.6 percent, 8.3 percent, 4.2 percent, and 2.5 percent, respectively, of the total construction workforce.[6] Laborers constituted 14.3 percent, 6.9 percent, 9.9 percent, and 10.1 percent, respectively, of the total workforce. Combined, helper employment in these areas was 5.8 percent of total construction employment.

It is important to note that the four pilot surveys, which included Jacksonville and Tuscon, were not designed to collect data on the employment of helpers, and do not report helpers by craft. In addition, because the NCS studies obtained data for only four geographic areas, the information produced by these studies cannot be projected to a nationwide estimate of the percent of helpers relative to the construction workforce as a whole. The Department believes that the information provided by these surveys is generally in line with the estimates used for the cost impact analysis provided in the NPRM.

The helper data reported in these four pilot studies also reflect inconsistencies between the level of skill associated with the ''helper'' and their compensation levels. Logically, a semi-skilled job would be expected to command a higher wage than an unskilled one, but this was not borne out by the NCS survey data. Helpers are defined, for purposes of these surveys, as ''semi-skilled'' workers; however, Table 2 of the NCS surveys shows that ''semi-skilled'' helpers are paid approximately the same wage as ''unskilled'' non-union laborers.[7] This inconsistency lends credence to the view that there is a widely disparate use of ''helpers'' in the construction industry.

The ABC stated that the Occupational Employment Statistics (OES) data show as many as 500,000 helpers currently working in the construction industry. As explained in the NPRM, the OES survey did not include a separate construction laborers definition, and the helper definition appears to encompass laborers where they assist craft workers. It is likely therefore that the OES figures include many laborers and other

[5] ''Helpers, construction trades'' were defined by the National Compensation Survey as ''[s]emi-skilled workers who assist other workers of usually higher levels of competence or skill. Helpers perform a variety of duties such as furnishing another worker with materials, tools, and supplies; cleaning work areas, machines, and equipment; feeding or offbearing machines; holding materials and tools; and performing routine duties. Helpers specialize in a particular craft or trade. A helper may learn a trade but does so informally and without contract or agreement with the employer.''

The AGC mistakenly refers to the helper definition used in the NCS surveys as the OES definition. The OES definition is set forth *infra* at note 15. In the future, NCS surveys (and OES surveys) will use the new Standard Occupational Classification (SOC) definition. Under the SOC definition, helpers are described as follows: ''Help [craft worker] by performing duties of lesser skill. Duties include using, supplying or holding materials or tools, and cleaning work area and equipment.''

[6] The percentage figures cited by the AGC are considerably higher than those previously cited by the Department because those cited by AGC reflect the elimination of supervisory construction workers from the total number of construction workers surveyed. The percentage of helpers in relation to the entire construction workforce is the appropriate percentage to compare to the data utilized in the NPRM.

[7] The NCS surveys actually show that the average wage rates reported for helpers are *below* the wage rates reported for ''unskilled'' construction laborers. However, the lower average wage rate paid helpers in these NCS surveys appears to be due to the fact that the laborer's rates are an average of wage rates paid to both union and non-union workers, while the helper's rates are based only on non-union data.

unskilled workers in the helper category. For this reason, the Department believes that OES figures overstate the use of helpers in the construction industry.

The ABC also noted that the Department, when first publishing the suspended rule in 1982, relied upon earlier BLS estimates that helpers constitute between 3 and 9 percent of the total workers in the industry, and stated that these estimates do not differ greatly from the statistics cited in the most recent NPRM. In the preamble to its 1982 Final Rule, the Department stated that BLS survey data of large metropolitan areas indicated that the estimated helper share of employment in the construction industry was between 3.2 percent and 5.6 percent. 47 FR 23650. However, the Department indicated that this estimate might be understated because the survey was limited to areas that were ''heavily unionized.'' *Id.* To correct this understatement, the Department assumed that the true union share of Davis-Bacon employment was 50 percent and, accordingly, adjusted the estimate of the helper share of employment in the construction industry to between 5.98 and 9.4 percent. *Id.* The Impact Analysis in the 1987 proposed rule utilized the OES survey as the basis for its assumption that 15 percent of employees in construction will be helpers. 52 FR 31368–31369. As discussed in the Impact Statement published in the NPRM, the Department now believes these estimates overstate the percentage of helpers in construction employment.

However, none of these surveys and studies shows the degree to which the use of helper classifications is actually prevailing within the meaning of the DBRA.[8] As discussed above, the 1987/1989 rulemaking projected helper classifications would prevail in two-thirds to 100% of all non-union craft classifications. The Department's limited experience, as reflected in the data collected during the implementation period, does not support these projections.

Several commenters stated that the 78 wage surveys conducted in 1992–93, upon which the Department relied in part to assess the extent of helper use, constituted too small a sample to be a reliable measure of the extent of helper employment throughout the construction industry. The AGC and the ABC cited a GAO audit of the Davis-Bacon wage survey process as the basis for their opinion that the Davis-Bacon surveys are unreliable and should not be used as a basis for estimating the extent of helper employment. GAO/HEHS–96–130 (May 1996). The ABC suggested that these survey results might also be unreliable because a large number of non-union contractors either did not voluntarily participate in the survey process or were not aware that helpers should be reported during the implementation period. Dr. Thieblot also expressed his belief that factors other than scarcity explain why relatively few helper rates were determined to prevail during the implementation period. Dr. Thieblot stated that the Department's inability to find helper rates prevailing during this period was due to the type of surveys conducted, where they were conducted, and how the results were interpreted.

The Department agrees with the comments that the 78 surveys were not a statistically valid sample and are not a reliable measure of the extent of helper employment in the industry. However, the Department has found its 1992–1993 survey data to be consistent with the relatively low incidence of helpers reflected in the other available data sources discussed in the Impact Analysis. The Department believes that a sufficient number of surveys were conducted to provide evidence that the earlier estimates of the extent to which use of helpers prevails were overstated. It is also worth noting that most of the surveys were selected to target areas where the Department believed that use of helpers would likely be found to be prevailing.[9]

While the report from the GAO raises the possibility that some prevailing wage decisions issued during this period might be affected by the submission of erroneous data, there is no evidence that the data collected by the Department concerning prevalence of the use of helpers were inaccurate or skewed by the submission of erroneous data.[10] Erroneous reporting of an employee's classification is not a typical error mentioned in the GAO report.[11] Thus, the GAO findings are not relevant to the issue of prevalence of the use of helpers and cannot be used to support the conclusion that the surveys conducted during the time that the semi-skilled helper rule was in effect are an unreliable source of information on that issue. The Department also disagrees with the comment that contractors were not made aware that they should be reporting helper employment during the implementation period. Specific instructions were included on the WD–10 survey forms to inform contractors of the definition of ''helper'' and that workers falling within that definition should be listed as helpers, regardless of job title.

Dr. Thieblot re-analyzed the non-union data on helper use, discarding all surveys which, based on the areas in which the surveys were performed and the type of construction surveyed, he did not believe would be likely to produce helper classifications. He then proceeded to eliminate all classifications that he believed would not ordinarily utilize helpers, such as truck drivers and equipment operator classifications. After paring down the data in this manner, Dr. Thieblot concluded that helper use prevails in 14.5% (48 of 331) of those non-union classifications he believed could possibly use helpers.

The assumptions on which Dr. Thieblot's analysis was based, regarding which geographic areas and which types of construction and classification are likely to produce helper classifications, appear to be speculative and inconsistent with the data in the surveys.[12] In any event, this total is much less than the two-thirds to 100% of all (non-union) craft classifications in which the Department previously estimated helpers would prevail.

Dr. Thieblot also questioned what he termed the Department's ''unexplained rejections of helper rates as prevailing

[8] In this regard, the AGC commented that ''[t]he percentage of helpers in the 'construction industry' is likely to underestimate their numbers and reveals nothing about their employment with respect to a particular craft.''

[9] The Department also reopened unpublished surveys that were conducted before the helper rules were in effect in order to include helper data.

[10] As the Department stated in the Final Rule, continuing the suspension of the ''semi-skilled'' helper regulations, ''It is inappropriate to draw conclusions concerning the accuracy of survey results based on the GAO report. The report did not examine or verify the accuracy of wage determination data, survey response rates, or calculation of prevailing wages. It focused on the policies and procedures utilized to prevent the use of inaccurate data, and proposed changes to strengthen those policies and procedures.'' 61 FR 68641, 68645.

[11] The typical errors mentioned in the GAO report concerning data submissions include:

- Reporting the wrong peak week,
- Reporting a slightly incorrect wage or fringe benefit rate (*e.g.,* reporting the rates currently being paid rather than the rates that were paid during the peak week that occurred ten months previously), or
- Reporting an average wage rate rather than the wage rate paid to each individual worker within the classification (*e.g.,* an employer might report five electricians paid one average rate when in fact each electrician was paid a slightly different rate).

[12] For example, although Dr. Thieblot eliminated highway construction and truck drivers from his count on the assumption that these types of construction and classifications would not use helpers, the Department found 6 instances in which truck driver distributor helpers prevailed and 3 instances in which mechanics' helpers prevailed on highway construction.

* * *.'' However, the Department followed the suspended rules at 29 CFR 1.7(d) for determining the circumstances in which a helper classification is found to prevail. For example, where the union electrician's rate was found to prevail, an electrician's helper classification would not be found to be prevailing unless it was the practice for union contractors to hire electrician's helpers. Where the electrician's rate was based on an average of wages paid, the determination of whether use of electrician's helpers prevailed was based on a comparison of the number of craft workers (journeymen, apprentices, trainees and helpers) working on projects utilizing electrician's helpers with the number of craft workers (journeymen, apprentices, and trainees) working on projects without helpers. Finally, the Department's data sufficiency guidelines in effect at the time required that the Department not list a classification and wage rate where the number of helpers used (or any other classification), or the number of contractors using helpers was not sufficient to determine a prevailing wage.[13]

After review of the comments, the Department continues to believe that helpers are not as widespread as it had previously assumed.

3. The Suspended Regulation Could Have a Negative Impact on Formal Apprenticeship and Training Programs

Although not its primary concern in this rulemaking, the Department believes that the potential impact of the suspended rule on formal apprenticeship and training programs merits discussion, given the Secretary's broad authority to protect and promote the welfare of workers, including the authority under the National Apprenticeship Act of 1937, 29 U.S.C. 50, *et seq.* (also known as the Fitzgerald Act) to promote apprenticeship. As stated in the NPRM, the Department believes that the suspended helper regulations could undermine effective training in the construction industry if contractors are permitted to use helpers, who may never become journeylevel workers, in lieu of apprentices and trainees participating in formal programs that place ratio limits on their use, assure that they receive full training, and lead to jobs at the journey level.

[13] Wage and Hour procedures in effect at the time required that, in order for a prevailing rate to be issued, there must be at least 6 workers employed by at least 3 contractors if the contractor-response rate was less than 50 percent, and at least 3 workers employed by at least 2 employers if the response rate was 50 percent or more.

Several commenters were concerned about the negative impact the suspended helper rule would have on formal apprenticeship and training programs. Congressional Representatives Clay, Owens, and Clyburn stated that minority and female workers would suffer reduced earning opportunities and/or lost wages and benefits if the suspended helper regulation were implemented. These congressmen expressed concern that the suspended rule would trap younger workers, including a disproportionate share of minority workers, in the new helper classifications; as a result these workers would never enter apprenticeship programs, which are the primary route to obtaining decent wages and fringe benefits. Representatives Schakowsky and Weiner echoed these concerns, stating that the suspended rule, which contains no requirement that contractors provide any training to helpers, would have an adverse impact on construction worker training and apprenticeship programs, thus exacerbating the current skills shortage in the construction industry. These congressmen also stated their belief that the suspended regulation would reduce opportunities available to minority and female workers within the construction industry by relegating them to helper status.

The Building Trades commented that, in the NPRM, the Department greatly understated the long-term negative impact the suspended regulation would have on formal apprenticeship and training programs. The Building Trades stated that the suspended helper regulations would permit almost unfettered use of low-paid semi-skilled helpers on DBRA-covered projects, thus offering contractors and subcontractors savings in labor costs without the *quid pro quo* of investing in apprenticeship training. The Building Trades stated that contractors and subcontractors who participate in and provide financial support for formal apprenticeship and training programs would be placed at a competitive disadvantage *vis-a-vis* contractors using helpers, thus undermining their continued participation in such programs. The Building Trades also expressed its concern that the suspended rule's failure to encourage formal craft training would eventually lead to a severe shortage of skilled craft workers in the industry.

LIUNA cited the GAO's finding that a ''major incentive'' for contractors to use apprentices has been the ability to pay less than the prevailing wage on DBRA projects. GAO/HRD–92–43 (1992), p. 11. LIUNA stated that the reduced apprenticeship opportunities that would accompany the suspended rule would result in additional costs for training workers, a long-term shortage of skilled workers, fewer genuine training opportunities for women and minority craft workers, and an increase in construction injuries, since most injuries occur to new, entry-level workers who are untrained or inadequately trained.

MESMA noted that prevailing wage laws support the funding and viability of many labor-management apprenticeship programs that provide state-of-the-art training and produce the most productive workers in the industry. MESMA stated that the overuse of helpers could lead to a reduction in skills and diminishing quality of construction, as well as an increase in industrial accidents, because helpers generally receive little or no safety training.

The NJATC commented that helpers under the suspended definition would likely perform the same role that apprentices now perform on the jobsite, only at a lower cost. The NJATC stated its belief that this practice would result in fewer indentured apprentices, as contractors, in competition to win federal construction contracts, would replace ''journeymen-in-training'' apprentices with lower-paid helpers in continually increasing numbers. NJATC stated that, within five to ten years, this replacement of apprentices with helpers on DBRA projects would result in an acute shortage of skilled construction workers.

The IBEW commented that, if use of helpers is allowed extensively on DBRA projects, contractors would no longer be motivated in a competitive setting to spend 2 percent or more of their payroll on training, and use an apprenticeship system requiring ratios, when they could use helpers and avoid such requirements.

On the other hand, both the ABC and the AGC commented that there is no basis for the Department's concern that increased recognition of helper classifications may have a detrimental effect on apprenticeship and training programs. The ABC stated that, over the last decade, funding and participation by open shop contractors in apprenticeship and training programs has increased significantly, independent of the Davis-Bacon regulatory process. The ABC stated that the Department's policies regarding apprenticeship programs and ratio requirements have made apprenticeship training unavailable to some workers who desire to enter the construction industry in semi-skilled jobs. The ABC further

stated that the helper classification is an important point of entry into the construction industry for young people, women and minorities, and that it is improper for the Department to refuse to recognize the prevailing practice of employing helpers in an effort to force into training programs workers who either may not be qualified or may not desire such training.

While acknowledging that the helper classification cannot be used as an informal training program, the APWC stated that it fulfills an important entry-level job opportunity for many construction workers. The AGC of Texas, on the other hand, stated that the use of helpers allows contractors to utilize unskilled workers while teaching them a trade or skill. Dr. Thieblot expressed concern that a larger number of skilled journeymen will be needed to sustain the construction industry in the future than the number which can be provided by existing apprenticeship and formal training programs. Dr. Thieblot also expressed his belief that the suspended helper rules, to the extent they would allow informal, on-the-job training of semi-skilled workers, would provide a necessary alternative to formal apprenticeship and training programs for training and upgrading workers to journeyman status.

The Mercatus Center expressed its belief that the increased employment of helpers under the suspended rule would provide greater employment and training opportunities for minorities and women. The ABC recommended more study on the potential impact on minorities and women prior to issuance of the proposed rule. The APWC stated that it is inappropriate for the Department, in analyzing the merits of the helper regulations, to express a preference for formal training, such as provided under union-sponsored apprenticeship plans, over the informal training methods utilized in the non-union sector.

The Department continues to believe that formal structured training programs are more effective than informal on-the-job training alone. The Department's encouragement of formal training is reflected in the provisions of the Secretary's DBRA regulations that currently allow laborers and mechanics classified as ''apprentices'' or ''trainees'' to be paid less than the prevailing wage rate on Davis-Bacon covered projects only if they are enrolled in a bona fide apprenticeship program registered with the Department's Office of Apprenticeship, Training Employer and Labor Services (ATELS) (formerly, Bureau of Apprenticeship and Training (BAT)) or a State Apprenticeship Agency recognized by ATELS, or a bona fide training program approved by the Department's Employment and Training Administration.

The Department views any increases in funding and participation in formal training programs in the open-shop construction community as a positive development, but this does not address the concerns expressed by several of the commenters that the implementation of the suspended rule would discourage the growth of such programs and result in the replacement on DBRA-covered projects of apprentices and trainees enrolled in formal programs, by helpers who could perform the same work as apprentices and trainees at a lower cost to the construction contractor and without any restrictions as to how helpers are used. The Department shares this concern, along with the additional concern that workers employed as helpers—and particularly, young, minority and female workers—will not receive the type of training necessary to become higher skilled, better paid workers. The Department notes that the Congressional Budget Office (CBO) has also recognized that the suspended rule might have a negative impact on apprenticeship and training programs.[14]

Although not the paramount concern in this rulemaking, the Department is of the view that the increased use of helpers under the suspended rule poses a significant risk that formal apprenticeship and training programs on DBRA-covered projects would be undermined.

Discussion of Other Alternatives Considered

Except for TxDOT, which appears to favor a combination of the proposed alternatives, none of the commenters urged the Department to adopt any of the alternatives set forth below. The ABC stated that, while it believes that the Department should reinstate the suspended rule, it would support further study of any of the proposed alternatives. The ABC commented that each of the proposed alternatives is preferable to adoption of the proposed rule, and that the Department has not given sufficient study to the alternative approaches. On the other hand, both the Building Trades and LIUNA indicated their belief that none of the alternative approaches considered by the Department is viable.

The Mercatus Center commented that the Department has not properly assessed the quantitative benefits of the alternatives presented in the NPRM. The Mercatus Center stated that, without better information on the costs and benefits of the alternatives, the Department places inordinate weight on such factors as ease of administration and enforcement, rather than on net social benefits. As explained in the NPRM, ''[e]ach alternative would likely result in greater use of helpers than under the proposed rule, but less than under the suspended rule,'' and therefore, ''the economic impact would presumably yield some portion but not all, of the savings anticipated under the suspended rule.'' 64 FR 17455. The Department also stated that it would not be possible to provide detailed estimates of the economic impacts of the alternatives because ''each alternative encompassed many possible variations and outcomes'' and ''there is no data source that would provide appropriate information on these variations and outcomes.'' *Id.*

1. Add a Ratio Requirement to the Suspended Helper Definition

The Department stated in the NPRM that it believed that implementation of a ratio provision would be essential if the suspended rule were implemented, in order to reduce the potential for abuse. The Department recognized, however, that adoption of a ratio provision would not address or resolve the suspended rule's definitional problems that make it extremely difficult for contractors, as well as Wage and Hour and contracting agencies, to identify and distinguish helpers from other workers for DBRA enforcement and wage determination purposes. The Department also questioned whether, as a practical matter, an appropriate nationwide or local ratio standard could be determined, and expressed concern for the substantial resources that would be required to determine appropriate ratios based on local practices.

The Building Trades expressed the view that any fixed nationwide ratio, like the ratio that was struck down in Federal court, would be arbitrary and capricious because it would be inconsistent with the underlying principle of DBRA that labor standards reflect local prevailing practices. LIUNA stated that the addition of a ratio requirement under the suspended rule

[14] The CBO stated in its Study: ''Modifying the Davis-Bacon Act: Implications for the Labor Market and the Federal Budget,'' July 1983 at page 42: ''Contractors who would have been induced to provide approved training and apprenticeship programs, because doing so was the only way of paying less than journeymen's wages on federal projects, might now reduce the number of apprentices in favor of helpers and informal trainees. To the extent that this adjustment occurred, less-skilled workers might receive less training of the type that would qualify them for entry into the skilled crafts—possibly reducing minority access to these crafts and limiting the supply of skilled labor in the future.''

would not address or resolve the definitional problems inherent in the suspended rule, and that it would be extremely difficult to develop an appropriate ratio standard that would reflect local practices.

Noting that the D.C. Circuit Court of Appeals allowed the Department to reinstate a ratio requirement provided that the Department can support such ratio with an administrative record, the ABC commented that the Department failed to develop such a record and did not attempt to set local ratios through the wage survey process.

The Mercatus Center stated that the Department should re-evaluate the original rationale for including a ratio in the suspended rule. The Mercatus Center noted that ratios appropriate for productive construction efforts are subject to change with changes in production methods, materials, technology, and population, and that due to regulatory time lag, any binding ratio might be obsolete in a few years. The Center suggested that if a rationale for the type of abuse a ratio is intended to prevent could be articulated, then a ceiling that is non-binding, but that would prevent any feared abuse of the helper category, might be workable.

TxDOT recommended that the Department adopt a combination of measures, including the addition of a ratio requirement to the suspended definition to prevent abuse of the helper classification. TxDOT suggested that varying the ratio requirement, depending on the type of work performed, might be a way of validating the ratio provision.

None of the commenters has provided the Department with specific guidance as to how an appropriate nationwide or local ratio standard could be determined. As noted in the NPRM, a nationwide ratio would not accord with local practices, whereas locally developed ratios would present significant administrative and enforcement concerns and would require substantial resources for implementation.

The difficulty with determining locally prevailing ratios begins with deciding how that ratio should be calculated. The easiest method would be to compare the total number of helpers to the total number of journeyworkers reported for the classification. This methodology, however, does not measure the typical ratio of helpers to journeyworkers on any particular job. For example, four hypothetical data submissions might report carpenters and carpenter helpers as follows:

Project	Number of carpenter helpers	Number of carpenters
A	1	2
B	1	2
C	6	1
D	1	2
Totals	9	7

In this example, the prevailing jobsite ratio of carpenter helpers to carpenters is clearly 1:2 (*i.e.*, on three of the four projects, contractors used one helper for every two carpenters). However, if the ratios are averaged, the resulting ratio would be almost 2:1 (1.875), and a ratio derived by dividing the total number of helpers by the number of carpenters would be greater than 1:1 (*i.e.*, 9:7 or 1.286). Therefore, either of these approaches could frequently yield a distorted picture of the true prevailing ratio.

Collecting and verifying data on the ratio of helpers to journeyworkers for each jobsite is likewise a difficult task. Currently, Wage and Hour collects data for each classification based on the ''peak week'' of employment on the project. This ''peak week'' may differ for each classification. Since one may find that the peak week of employment for carpenters is a different week than that for the carpenters' helpers, the ratio would vary as well. It is not clear how the peak week concept should be applied in this situation. Any solution to this question could be administratively costly and time-consuming for Wage and Hour and for contractors, thereby impacting the Department's ability to obtain the cooperation of contractors to collect accurate data.

The Department remains of the view that adding a ratio requirement would be essential to reduce the potential for abuse from the excessive use and misclassification of helpers if the suspended rule were implemented. The D.C. Circuit Court of Appeals also recognized the importance of a ratio provision to the effective administration and enforcement of the suspended helper rule when it stated that ''the Secretary has increased the likelihood that gross violations will be caught, or at least that evasion will not get too far out of line, by putting the forty-percent cap on the use of helpers. * * * [T]he existence of some cap at least increases our confidence that the Secretary has considered the enforcement problems of the new definition and responded to them.'' Donovan, 712 F.2d at 630.

More importantly, the Department continues to believe the addition of a ratio provision to the suspended helper rule—although it might curb the worst abuses—would not address or resolve the problems inherent in the suspended rule's definition, which, as discussed above, make it extremely difficult to identify helpers for DBRA enforcement and wage determination purposes.

2. Change the Suspended ''Helper'' Definition To Emphasize the Semi-Skilled Nature of the Classification

In the NPRM, the Department stated that it believed that amending the ''helper'' definition to emphasize its semi-skilled nature would help assure that the helper classification would be a true ''semi-skilled'' classification rather than a broad catch-all classification that could perform everything from laborer duties to an undefined and potentially unlimited assortment of skilled tasks overlapping the work of journeyworkers. The Department suggested that this approach would aid in distinguishing helpers from laborers by emphasizing the ''semi-skilled'' nature of helpers, as distinguished from the unskilled duties in the definition in the suspended rule. Under this approach the definition would elaborate on the supervisory relationship between the helper and the journeyworker and the craft-specific assistance provided, and expressly limit the unskilled work the helper could perform. The Department noted, however, that this alternative would not resolve the administrative and enforcement problems that stem from the overlap of duties between journeyworkers and helpers, and that it might result in helper classifications being used to replace, rather than supplement, the use of apprentices and trainees registered in bona fide training programs.

The Building Trades commented that, even under this modified definition of a helper, it would not be possible to distinguish a helper from a laborer because laborers also assist craft workers and many use tools of the trade to perform certain duties. The Building Trades also noted that a laborer working under the supervision of a journeylevel worker could be classified as a lower-paid helper under this definition, simply by adding to his or her duties a few relatively low-skilled tasks using tools of the trade.

LIUNA stated that this alternative would not prevent the substitution of helpers for laborers, because laborers perform not only unskilled duties, but a wide array of semi-skilled duties as well. LIUNA further stated that, because laborers generally earn higher wages than helpers, this alternative would

result in misclassification of laborers just as would the suspended rule.

The ABC stated that the Department's rejection of this alternative on the grounds that helpers would continue to have overlapping duties with journeymen is inappropriate. The ABC stated that, if the prevailing practice is to employ helpers to perform duties overlapping with those of journeylevel workers, it is the Department's statutory obligation to recognize that practice.

The Department continues to believe that this alternative would not resolve the administrative and enforcement problems that would stem from the overlap of duties between journeyworkers and helpers. The Department remains of the view that the emphasis on semi-skilled duties under this approach might result in helper classifications being used to replace, rather than supplement, the use of apprentices and trainees registered in bona fide training programs. Furthermore, it appears that this alternative might not even resolve the problems of overlap of duties between helpers and laborers.

3. Define ''Helpers'' Based on the Bureau of Labor Statistics, Occupational Employment Statistics (OES) Dictionary of Occupations, Which Focuses on Unskilled Duties and the Worker's Interaction With Journeylevel Craft Workers [15]

The Department noted in the NPRM that this approach, by focusing on the role of the helper in assisting the journeyworker and eliminating the ''semi-skilled'' characterization from the definition of helpers, could provide a more practical basis for distinguishing helpers from journeyworkers. However, the Department expressed its concern that laborers may often perform the same work encompassed within the OES helper definition, thereby causing significant problems for Wage and Hour in conducting wage and area practice surveys and in enforcement because of the lack of clear differentiation between the classifications. The Department also stated that it might be difficult under this approach for contractors to determine whether workers performing similar or identical duties are ''laborers'' or ''helpers'' when submitting DBRA survey data and in classifying workers on DBRA-covered projects.

Both the Building Trades and LIUNA commented that this alternative would present the same problem as that presented by the suspended rule, viz., helpers and laborers both perform the work as described in the operative definition. The Building Trades and LIUNA state that it would be difficult for contractors to determine whether workers performing similar or identical duties are laborers or helpers when submitting Davis-Bacon survey data and in classifying workers on DBRA projects.

The AGC commented that the OES definition of a helper is consistent with the definition in the suspended regulation, and can be used by contractors to effectively distinguish helpers from laborers and other craft workers. The ABC objected to the Department's characterization of the OES definition as ''eliminating the semi-skilled characterization'' from the definition of helpers. The ABC further stated that any such elimination would deny an essential component of helpers and would defeat the statutory mandate of recognizing prevailing practices.

None of the commenters has demonstrated how helpers can be effectively distinguished from laborers under this approach for both enforcement and wage determination purposes, given that laborers would often perform the same work as that described in the OES helper definition. Moreover, the Department does not believe that focusing on the role of the helper in assisting the journeyworker is an effective means for distinguishing helpers from laborers. None of the commenters disputes that laborers, too, are frequently called upon in the performance of their regular duties to assist journeymen.

4. Explicitly Delineate the Semi-Skilled Tasks Performed by Each Helper Classification

As this so-called ''job family'' approach was described in the NPRM, an employee who performs only lower level duties that are associated with a particular craft may be classified and paid at the lower level helper rate; however, an employee who performs some lower level duties and some higher level duties must be paid the higher journeylevel rate for all of the employee's work time. The Department stated that this approach, in effect, would allow for the expanded use of helpers, with differentiation based on the skill and knowledge required to perform particular duties. The Department theorized that once the duties or tasks that the helpers could perform were clearly defined, wage data could be collected on that basis, and contractors could reasonably be expected to comply with the wage requirements for the various classifications employed on their contracts, thereby facilitating administration and enforcement. The Department stated, however, that developing clear definitions of the duties or tasks that helpers to each journeylevel craft worker would be allowed to perform would be very difficult, requiring extensive occupational analyses and further rulemaking to promulgate helpers' duties descriptions. The Department further questioned whether this approach, which presumably would result in uniform, nationwide definitions, would be consistent with the underlying principle that DBRA classifications are determined based on local area practices.

The Building Trades and LIUNA stated that developing clear definitions of the duties or tasks that helpers would be allowed to perform would be very difficult, requiring extensive occupational analyses to develop accurate and specific descriptions of helpers' duties. They also commented that the uniform, nationwide definitions that would result from application of this alternative would not necessarily reflect locally prevailing practices, as DBRA requires.

TxDOT appears to favor this or a similar approach, in that it recommended (in conjunction with other recommendations) the use of standardized definitions for both journeylevel and helper classifications, stating that each level of classification should require a specific level of skill, and for those classifications where a specific skill is not required, the common laborer classification should be utilized in lieu of a helper classification. TxDOT stated that, under this approach, the need for a semi-skilled worker classification would be eliminated. The AGC of Texas provided a copy of its ''Standard Job Classifications'' booklet to demonstrate the use of standard, uniform job definitions for job classifications, including several helper classifications, in connection with highway, heavy, utility, and industrial construction projects in the State of Texas.

TxDOT also proposed that the Department expand and define the role of training programs with regard to such helper classifications, thus allowing helpers to progress to a status of ''journeyman trainee'' and then

[15] The OES Dictionary of Occupations classification scheme includes a broad category titled ''Helpers, Laborers, and Material Movers, Hand, Exclud[ing] Agricultural and Forestry Laborers.'' The work of helpers in the construction industry is described as follows: ''Help workers in the construction trades, such as Bricklayers, Carpenters, Electricians, Painters, Plumbers and Surveyors. Perform duties such as furnishing tools, materials, and supplies to other workers; cleaning work areas, machines, and tools; and holding materials or tools for other workers.''

journeyman. However, though the Department has concern for the impact its helper regulations may have on apprenticeship and training programs, it is not within the Department's purview in the context of this Davis-Bacon Act rulemaking to expand and define the role of training programs with respect to helpers.

The Department believes that adoption of this approach is simply not practicable because of the expenditure of time and resources that would be necessary to develop job descriptions for all the construction crafts. The Department also believes that this approach is inadvisable because it would amount to recognizing sub-classifications within each craft, a practice that has never been permitted under DBRA.

Furthermore, close examination reveals that the helper definitions created by the AGC of Texas suffer from the same infirmities as the helper definition in the suspended rule. For example, the AGC of Texas booklet provides the following job description for a ''Carpenter Helper, Rough'' classification: [16]

> A learner or worker semi-skilled in this craft who assists a rough carpenter by expediting materials, keeping work area clean, sawing lumber to size specified, and assisting in constructing wooden structures, under the direction of a Rough Carpenter. Performs other related duties.

Like the suspended helper definition, this definition uses the undefined term ''semi-skilled'' to describe the carpenters' helper classification without explaining what it means to be ''semi-skilled.'' Additionally, this definition is internally inconsistent in that it defines the carpenters' helper as ''semi-skilled,'' but specifically lists duties that might commonly be performed by unskilled laborers. The definition not only allows the duties of a helper to overlap with those of a journeyworker, but also provides no limitation on the duties a carpenter's helper can perform by including the open-ended phrase ''[p]erforms other related duties.'' Lastly, this definition, by referring to a carpenter helper as a ''learner,'' poses perhaps an even greater risk than the suspended helper definition that helpers will be substituted for apprentices and trainees participating in formal programs that lead to workers achieving journeylevel status.

The Proposed Rule—Helpers as a Distinct Class With Clearly Defined Duties Which Do Not Overlap With Laborer or Journeyman Classifications

Congressional Representatives Norwood, Goodling, Ballenger, Boehner, Hoekstra, McKeon, and Paul opposed the Department's proposed helper regulations, stating that they would tend to discourage rather than facilitate the use of helpers on DBRA projects. They commented that the proposed regulations are deficient because they do not reflect current industry practice and are not responsive to the needs and practices of the vast majority of the construction industry. These congressmen also stated that the proposed helper rule, in contrast to the suspended rule, will not encourage access by low-skilled workers to valuable entry-level jobs. They further stated that opening more helper jobs under the suspended rule would attract workers to the construction industry, which suffers from a serious shortage of skilled workers.

Representatives Clay, Owens, and Clyburn supported the proposed rule on the basis that it not only better reflects the current practices of Davis-Bacon contractors, but also ensures that minority workers will be paid locally prevailing wages and fringe benefits. They further commented that the proposed rule will ensure that the Federal government, through its procurement practices, will not act to undermine the living standards of workers, and will promote continued access to the kinds of apprenticeship programs that are essential if new workers in the construction industry are to better themselves.

Representatives Schakowsky and Weiner also urged the Department to adopt as final the proposed rule because it recognizes the need for a clear delineation and limitation on the use of helpers on DBRA-covered projects. They stated that the proposed rule will encourage proper training for young, minority and female workers by promoting formal and effective apprenticeship programs. They also commented that the proposed rule will enhance the presence of more skilled and productive workers on Davis-Bacon projects, thus reducing the costs resulting from job-related injuries and improving the economic situation of the entire community.

The AGC, the ABC, Dr. Thieblot, and the SBSC all opposed the Department's proposed rule and advocated implementation of the suspended rule. These commenters, as well as the APWC, stated that where the use of helpers prevails, they should be recognized by the Department in accordance with its statutory mandate to reflect prevailing practices. For example, the ABC commented that, if it is the prevailing practice to employ helpers in a given locality to perform overlapping duties with journeymen, the Department of Labor has an obligation to recognize that practice. The AGC echoed this point, stating that even if helpers prevail in only 3.9 percent or 2.7 percent of surveyed job classifications, as surmised by the Department in its NPRM, helper classifications should nonetheless be recognized in those instances where they are found to prevail. The ABC also urged the Department to delay issuance of the proposed rule until the upgrade of the Department's survey and data collection processes has been completed and a fair and objective study of the helper issue is conducted.

The AGC of Texas supported restoring the increased use of helpers under the suspended rule, stating that for more than 35 years helper classifications have been recognized in Texas and are still being used on projects that have no Federal funds. The Mercatus Center generally opposed adoption of the proposed rule, primarily based on economic considerations. Elcon specifically objected to the Department's refusal under its current policy to approve the elevator helper classification negotiated by the International Union of Elevator Constructors. Elcon stated that the Davis-Bacon Act should not be used to make new rules that would reduce competition, unnecessarily inflate costs on Federal construction projects, provide unfair advantages for nonunion organizations, and create separate job definitions for Federal projects.

The Building Trades and LIUNA both urged the Department to adopt the proposed rule. They favored the proposed rule because it reestablishes the duties-based classification approach, provides an objective basis for administration and enforcement, including clear criteria that facilitate contractor compliance, and is consistent with the statutory intent to assure that workers employed on DBRA projects receive the prevailing wages paid to workers performing similar work on similar construction in the same area. They also stated that the proposed rule's lack of overlapping duties will discourage contractor misclassification and abuse and that the requirement that helpers be separate and distinct from

[16] The definition for a ''Carpenter Helper, Rough'' is fairly representative of all of the helper definitions contained in the AGC of Texas booklet. They generally all begin with the phrase, ''A learner or worker semi-skilled in this craft''; require supervision by the journeyworker; provide a list of specific duties; and conclude with the phrase, ''Performs other related duties.'' Though the specific duties vary from craft to craft with respect to each helper classification, they are basically unskilled duties that a laborer could perform.

journeylevel workers and laborers will facilitate collection of wage data used to establish prevailing wage rates on DBRA work. Finally, they stated that the proposed rule will provide strong incentives to contractors and subcontractors to establish and participate in formal apprenticeship and training programs.

MESMA opposed the use of helpers without stringent enforcement by the Department as part of a comprehensive Davis-Bacon reform effort. MESMA expressed concern that the overuse of helpers could lead to a reduction in workforce skills, diminishing quality of construction, and an increase in industrial accidents. The NJATC opposed the helper concept in general based on its belief that the institution of helpers will have a negative impact on apprenticeship and training programs. The IBEW opposed adoption of the Department's proposed rule based on its general opposition to use of helper classifications, under any definition, on DBRA projects. The IBEW suggested that the creation of helper classifications may bring down wage scales, put more people in poverty, and force construction workers to work more than one job in order to survive economically. MESMA and the IBEW both questioned whether the helper criteria under the proposed regulation can be effectively administered and enforced.

Based on careful review of the comments and further consideration of the alternatives, the Department has decided to adopt as a final rule an amendment to the regulations that will incorporate the longstanding policy of recognizing helpers as a distinct classification on DBRA-covered work only where Wage and Hour determines that (1) the duties of the helper are clearly defined and distinct from those of the craft worker and laborer, *i.e.,* the duties of the helper are not routinely performed by any other classifications in a given area; (2) the use of such helpers is the prevailing practice in the area; and (3) the helper is not used as a ''trainee'' in an informal training program.

The Department favors this approach because it incorporates the duties-based methodology for distinguishing classifications that the Department utilizes in identifying other classifications under the DBRA. By providing for the recognition of helpers based on the duties they perform, rather than on the worker's skill level and the existence of supervision, the proposed rule provides an objective basis for Wage and Hour to administer and enforce the statute's prevailing wage requirements with respect to the employment of helpers. This duties-based approach also facilitates compliance by providing clearer criteria to be followed by contractors who wish to employ helpers on DBRA-covered projects.

The Department also believes that, by recognizing helpers only where their duties are distinct and do not overlap with those routinely performed by other classifications, the proposed rule will discourage contractor misclassification and/or abuse that could result from contractors reclassifying journeyworkers and laborers as helpers at lesser rates of pay on DBRA jobs.

The Department believes that the proposed rule provides the only approach that is administratively feasible. Unlike some of the other alternatives considered, the policy under the proposed rule does not require Wage and Hour, in its enforcement, to make a fact-bound inquiry of each worker to assess his or her skill level and the nature of the worksite supervision he or she receives to determine whether the worker will be recognized as a ''helper'' for Davis-Bacon purposes. The requirement that helpers have distinct duties from those of other classifications on the wage determination also facilitates the collection of wage data that more reliably reflect the prevailing wage rates paid for work performed by helpers on DBRA-covered construction work.

Under the regulations, helpers—whatever their job title—will be recognized, as they are today, whenever their duties are separate and distinct from duties routinely performed by other classifications. For example, tender classifications are common on Davis-Bacon wage determinations. On the other hand, where helpers are just lesser skilled workers of a particular craft, they will be included in the surveys under the craft classification, and their rates averaged together with the journeylevel workers (where there is no rate paid to a majority of the workers in the classification).[17]

Additionally, this approach maintains the current incentive to contractors to establish and participate in structured apprenticeship and training programs that facilitate the advancement of lesser skilled workers to journeylevel status.

The chief objection to the proposed rule expressed by commenters in this rulemaking is that it disregards local area practices in those instances where there may be a prevailing practice of employing helpers who do not meet the three-part regulatory test as set forth above. The gravamen of this objection is that the proposed rule does not accord with the Department's statutory obligation to provide classifications and wage rates that mirror locally prevailing practices.

The Department believes that the proposed rule is fully consistent with the DBRA's underlying prevailing wage goals and requirements. The Davis-Bacon Act provides little guidance concerning the methodology the Secretary is to use in determining ''classes'' of laborers and mechanics and their respective prevailing wage. Consequently, the Secretary has a substantial amount of flexibility and discretion in devising a methodology to fulfill the Department's statutory obligations and responsibilities under the Act. *Donovan,* 712 F.2d at 616, 629–630; *Miami Elevator Company and Mid-American Elevator Company, Inc.,* ARB Case Nos. 98–086 and 97–145 (April 25, 2000), slip op. at 35.

The Davis-Bacon Act directs the Secretary to determine the prevailing wage for ''corresponding classes'' of laborers and mechanics. It has been the longstanding practice of the Department—with the exception of the short period during which the suspended rule was implemented—to utilize a duties-based approach to identifying classes of laborer and mechanics.[18] Under this practice, the duties that a particular class of worker performs may vary somewhat from one area to another; and a classification may be recognized in one area and be subsumed under another classification in another area, in accordance with prevailing area practice. Thus, in one area a helper may be a separate class, while, in another area, it may be subsumed under another classification in accordance with prevailing area practice. Although this duties-based distinction is not mandated by the statute, the Department believes it is

[17] Employers who use helpers that meet the definition under this final rule should report the use of helpers in response to Davis-Bacon prevailing wage surveys, along with a description of the duties or other characteristics that distinguish helpers from other workers. Where ''helpers'' perform the duties of another classification on the wage determination, the employer should report the ''helper'' under that classification. If helpers are listed on a WD–10 survey form, the Department will determine whether they are a separate classification, meeting the criteria of the regulations; if not, the Department will determine the appropriate classification for the work performed and include the ''helpers'' and their wage rates under that classification—laborer, craft worker, or otherwise.

[18] The Department has created a regulatory exception for apprentices and trainees in approved programs.

fully consistent with the legislative history and statutory intent.

Furthermore, the Department believes it simply is not feasible to graft onto a duties-based system of classifications, one class defined on the basis of skill and supervision. Since the craft worker is not defined on the basis of skill and supervision, and the prevailing wage of the craft worker is based on rates paid to workers with a range of skills and supervision, it does not make sense to carve out certain workers who may have less skill and receive more supervision.

In addition, the Department has been unable to determine how the suspended helper rule can be administered and enforced in accordance with the DBRA's prevailing wage requirement. A review of the comments reveals no consensus as to how helpers are used in the construction industry, and the commenters provided no information to aid the Department in identifying a generally accepted definition of a helper that corresponds to industry practices. Nor is there a practicable, reasonable way to identify helpers, when the manner in which they are used varies so in each and every area where DBRA-covered construction is taking place.

The Department's Administrative Review Board in its recent decision in the case of *Miami Elevator Company and Mid-American Elevator Company, Inc.,* ARB Case Nos. 98–086 and 97–145 (April 25, 2000), explained the Department's position. In response to an argument that the Department's refusal to approve an elevator helper classification because it did not meet the current three-part test resulted in ''a staffing pattern that is inconsistent with locally prevailing practice,'' the Board stated as follows:

> ''[W]e note that the oft-repeated declaration that the purpose of the Davis-Bacon Act is to 'hold * * * a mirror up to local prevailing wage conditions and reflect * * * them' on federal construction projects is a simplistic and inaccurate characterization of the statute. [Citation omitted]
>
> * * * * *
>
> ''[I]t is virtually inevitable that some laborers and mechanics who work in a given jurisdiction are paid less than the prevailing wage rates determined by the Secretary, yet the congressionally-mandated prevailing wage scheme requires that all construction workers be paid not-less-than the prevailing rate when employed on a federal construction contract—even those workers who might otherwise be employed on non-Federal projects in the local construction industry at lower pay scales. The goal of the Act is not merely to replicate (or ''mirror'') the full range of local pay scales, but to require that workers be paid at least the prevailing rate.
>
> * * * * *
>
> ''In sum, the prevailing wage mechanism chosen by Congress always has included the possibility that some construction workers in a locality who normally earn less than the prevailing wage might earn more when employed on a project subject to the Act; similarly, the Secretary and the Administrator have a long history of limiting the circumstances under which workers in a training mode would be allowed to work on federally-funded projects, generally insisting that such workers be enrolled in government-approved training programs designed to promote quality training and prevent abuse. The fact that these forces combine to produce a staffing pattern that may not 'mirror' local practice does not mean that the Administrator's decisions are incorrect, either under the law or regulations.'' *Miami Elevator Company, supra,* slip op. at 33–34.

Accordingly, the Department concludes that the proposed rule, by requiring that the duties of a helper be distinct from those of other classifications employed on the jobsite, best fulfills the fundamental purpose of the Davis-Bacon Act to assure that workers employed on federal and federally-assisted construction work be paid at least the wages paid to corresponding classes of workers on similar construction in the area.

The Department points out that it is not its intention that a helper classification would never be issued simply because some workers in another classification occasionally perform the work in question. As discussed above, the Department intends to issue helper classifications where the duties in question are not routinely performed by another classification on the wage determination and it is the prevailing practice in the area for helpers/tenders to perform the work in question, *provided* the other criteria of the regulation are met. In other words, although roofers may occasionally tear off roofing or carry roofing materials, the Department will issue a roofer's helper classification in a wage determination if more roofer's helpers perform these tasks than roofers on the projects surveyed, *provided* that the helpers tasks are clearly defined and do not include duties that prevail for other classifications in the area (*e.g.,* application of roofing where it is prevailing practice that roofers perform this work), and that the helper is not an informal trainee. Consistent with the Department's practice on approval of additional classifications under the conformance procedures at section 5.5(a)(1)(ii)(A), moreover, the Department will not approve an additional classification of helper if the helper performs any tasks that are ever performed by other classifications on the wage determination. Thus, in the example given, the Department would not approve the roofer's helper as an additional classification because tearing off of roof and carrying of roofing materials are sometimes done by roofers.

Consistent with the above discussion, the regulations have been amended to delete the suspended provision at section 1.7(d), defining the circumstances in which use of helpers would be found to prevail. The Department will apply its longstanding policies in determining prevailing practices. Section 5.2(n)(4) has been revised to set forth the circumstances in which helpers will be recognized on wage determinations and in additional classification (conformance) requests. Finally, the conformance provisions at section 5.5(a)(1)(ii) have been revised to delete the special references to helpers from the suspended paragraphs, and the second conformance provision at section 5.5(a)(1)(v), which was in effect during the period of the suspended regulation, has been deleted.

Additional Modifications

The regulations are further amended to reflect the organizational change in the title of the Bureau of Apprenticeship and Training (BAT) to the Office of Apprenticeship, Training Employer and Labor Services (ATELS).

IV. Executive Order 12866; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act

Summary

The Department determined that the proposed rule should be treated as ''economically significant'' within the meaning of Executive Order 12866 and as a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act because the various alternatives to the proposed rule, including reinstatement of the suspended rule, could result in potential savings in excess of $100 million per year. Therefore, a full economic impact analysis was prepared and presented for comment.[19] The principal finding of this analysis was that any impact resulting from the increased use of helpers under the suspended rule, or any of the other alternatives considered, would be relatively modest. The Department estimated potential savings under the suspended rule to be from $72.8 million

[19] The Department also determined, for the reasons explained in the NPRM, that the provisions of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking. None of the commenters disputed this determination.

(utilizing Current Population Survey (CPS) data) to $296.0 million (utilizing Occupational Employment Statistics (OES) data). The Department also devised an alternative methodology that is OES-based, but utilizes CPS data to compensate for the likelihood that OES data overestimate the number of helpers and underestimate the number of laborers. This ''adjusted-OES data'' provided an estimate of $108.6 million in possible savings. As discussed in the NPRM, the Department believes that the potential savings are likely to be closer to $72.8 million than $296.0 million.

Discussion of Comments

The AGC does not believe that the surveys and data sources used by the Department support the conclusion that the employment of helpers is not as widespread as previously believed. Specifically, the AGC pointed out that, although the OES survey used does combine laborers, helpers and other categories, the survey is being revised to separate the helpers and laborers, making it more useful in the future. The AGC states that independent contractors rarely bid on Federal construction contracts, but rather are frequently hired by the contractors that are awarded the contracts. It therefore disagreed with the Department's view that inclusion of self-employed workers in the CPS is a strength of the survey. Furthermore, the AGC disagreed with the Department's statement that the OES definition of helpers is very similar to laborers who assist journeymen. Finally, the AGC disagreed with the Department's conclusion that the OES survey likely includes laborer employment with helper employment, thereby overstating the number of helpers and stated that the Department offers no support for its view that contractors cannot distinguish between helpers and laborers.

The ABC believes that the Department's economic impact and flexibility analysis greatly understates the economic costs of the proposed rule. Raising similar concerns to those raised by the AGC, the ABC stated that the Department's analysis is flawed by: (1) A lack of evidence that helpers would replace laborers and apprentices in proportion to the number of workers in each of those occupations; (2) the absence of a basis for assuming that OES statistics include large numbers of laborers in the estimates of helpers; (3) improper inclusion of self-employed workers in the universe of ''relevant'' construction employment; and (4) the use of flawed and distorted 1992–1993 wage surveys to estimate the number of classifications in which helpers would prevail. The ABC estimates that the proposed rule will cost hundreds of millions of dollars each year.

Turning first to the CPS survey, the Department continues to believe that it is appropriate to include independent contractors in construction workforce data. As the AGC said, independent contractors (performing as journeylevel workers) are frequently hired by contractors on Davis-Bacon contracts. Furthermore, independent contractors performing the work of laborers or mechanics are covered by the Act. No other concerns have been raised regarding the appropriateness of the data in the CPS. Therefore, as stated in the NPRM (*see* 64 FR 17561), based principally on the fact at this time the OES has not published data with a separate classification for laborer, together with the fact that OES does not collect data on self-employed individuals, Wage and Hour continues to believe that the CPS data are more likely than the OES data to be representative of the distribution of employment in construction by occupation for helpers and laborers.

The assumption that helpers would replace laborers, apprentices, and journeyworkers in proportion to the number of workers in each of these occupations is addressed in the NPRM at 64 FR 17499. The Department explained that the 1989 helper impact analysis assumed that helpers would replace only journeyworkers, and measured the wage differentials based only on this replacement effect. The Department now believes this assumption was incorrect because helpers frequently perform laborers' duties and laborers' wage rates would sometimes be higher than helpers' rates on the wage determination. The Department observed that comments received from some contractors surveyed in the processing of helper conformance requests during the period the suspended regulations were in effect indicated that they used the job title ''laborer'' for workers meeting the definition of ''helper'' under the suspended regulation. The Department took a ''middle ground'' in its impact analysis by assuming that helpers would replace laborers, apprentices, and journeyworkers in the same proportion as their relative occupational employment.[20] The comments do not undermine the reasonableness of this assumption or provide a reasonable, alternative approach.

The assumption that large numbers of laborers are included in the OES helper data is based on the absence of a separate OES laborer classification, and the fact that the duties described in the OES helper definition are similar to those performed by laborers.[21] Furthermore, other available surveys, such as the CPS, the Decennial Census, and the four NCS pilot surveys conducted by BLS show a much greater incidence of laborer employment than could be gleaned from the OES survey data. As AGC pointed out, a separate construction laborer classification is included in the new Standard Occupational Classification definitions and will be used in future OES surveys.

The ABC's contention that the 1992–1993 wage surveys were distorted has been discussed above. In addition, these survey results were used only for the assumption that helpers would be likely to ''prevail'' for a limited number of classes in areas representing about half the construction employment covered by the Davis-Bacon and Related Acts. [22]

Representative Norwood and the congressmen who joined in his comments stated that the proposed rule is based on an unrealistic economic impact analysis, noting that the Congressional Budget Office (CBO) has estimated that legislation allowing the increased use of helpers could save the Federal government $1.4 billion over five years and $3.5 billion over 10 years. The CBO's precise methodology for estimating the reduction in discretionary outlays over five and ten year periods has not been provided. It is the Department's understanding that the CBO estimates are based on the methodology used by the Department to estimate savings in its original impact analysis conducted in 1982, with estimated percentages of savings modified (from 1.6 percent of federal construction costs to .8 percent) to account for changes to certain assumptions made in the 1982 analysis.[23] For the reasons set forth in the NPRM, the Department now believes, based on more current information and data sources that were

[20] With its ''middle ground'' approach, the Department calculated that the great majority of helpers would replace higher-paid journeyworkers, thus enhancing the potential savings computed under the suspended definition.

[21] Helpers, as defined by OES, ''perform duties such as furnishing tools, materials and supplies to other workers; cleaning work areas, machines, and tools; and holding materials or tools for other workers.''

[22] One or more classifications of helper (union and open shop) were found to prevail in 35 of 78 surveys. Open shop helpers were found to prevail in only 20 of 78 surveys.

[23] A 1994 GAO report, ''Changes to the Davis-Bacon Act Regulations and Administration,'' (GAO/HEHS–94–95R, February 7, 1994), noted that, as of September 1993, the use of helpers was found to be a prevailing practice in 23 of 73 surveys (32 percent) completed since the surveys were started in April 1992.

not then available, that many of those assumptions were wrong. The Department also points out that the CBO savings estimates are consistent with the high end of the savings estimates set forth in the Department's latest economic impact analysis, based on the OES data.

The Building Trades and LIUNA both state that the Department's economic impact analysis overstates any possible cost savings under the suspended rule and that consideration of certain other factors would eliminate the ''modest'' savings predicted by the Department in its analysis. The other factors that the Building Trades and LIUNA believe would offset any potential savings under the suspended rule include: (1) Lowered productivity of construction workers as contractors employ more low-wage, lesser-skilled workers; (2) lowered income and sales tax revenues resulting from lowered worker income; (3) negative impact on apprenticeship programs with reduced training levels and lower skill levels among construction workers; (4) increased incidences of accidents and increased workers' compensation premiums due to the increase in the number of new, entry-level workers who are untrained or inadequately trained; and (5) the negative impact on the quality of public construction resulting from the increased use of lower-paid, lesser-skilled workers. Finally, the Building Trades and LIUNA believe that the suspended rule, in and of itself, would probably have no effect on Federal budgetary outlays, as it is unlikely that there would be a reduction in congressional appropriations for Federal and federally-assisted public building and public works projects to reflect the anticipated cost savings from the increased use of helpers.

While the factors mentioned by the Building Trades and LIUNA could have some bearing on impact analysis estimates (the NPRM did, for example, note the possibility of reduced savings as a result of fewer apprenticeships and higher journeyworker wage rates), adequate data simply are not available to allow detailed consideration of these factors. Of the many studies cited, none provides the framework or data necessary for integration into an economic impact analysis. Furthermore, there may be offsetting factors which could neutralize the effects of the factors cited.

Of the many studies cited by these commenters, none provides the framework or data necessary for integration into an economic impact analysis. For the most part, the studies cited in the union comments do not focus directly on the comparative costs of the two helper rules, but rather on the more general cost differentials associated with union versus open shop construction. Moreover, the Department has determined that comparisons would be made using only primary, direct costs for the following reasons: (1) Generally accepted databases maintained by Federal agencies should be relied upon in the comparative cost study; and (2) the impact of such factors as productivity, social costs/benefits, and construction quality are not definitive, and therefore, consideration of these factors would invite considerable debate from those who have reached opposite conclusions based on their research.

The Department therefore concludes that the belief expressed by the Building Trades and LIUNA that adoption of the suspended rule would probably have no effect on Federal budgetary outlays is too speculative to form an appropriate basis for their integration into a cost-impact analysis.

Final Regulatory Impact Analysis

After review of the comments, the Department has concluded that there is no reason to change its estimates of the potential savings under the suspended rule and the other alternatives considered, in comparison to the proposed rule, as set forth in the preliminary regulatory impact analysis.

V. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, Public Law 96–354 (94 Stat. 1164; 5 U.S.C. 601 *et seq.*), Federal agencies are required to prepare and make available for public comment an initial regulatory flexibility analysis that describes the anticipated impact of proposed rules that would have a significant economic impact on small entities. Though the Department determined that a regulatory flexibility analysis was not necessary for the proposed rule because it would not have a significant economic impact on a substantial number of small entities, it nonetheless published for comment such an analysis because of the interest in the rule.[24] After review of the comments and consideration of the various alternatives, the Department has prepared the following regulatory flexibility analysis regarding this rule:

(1) The Need for and Objectives of the Rule

In 1982, Wage and Hour published final regulations which, among other things, would have allowed contractors to use ''semi-skilled'' helpers on Davis-Bacon covered projects at wages lower than those paid to skilled journeyworkers. These rules represented a sharp departure from Wage and Hour's longstanding practice of not allowing overlap of duties between job classifications. To protect against possible abuse, a provision was included limiting the number of helpers which could be used on a covered project to a maximum of two helpers for every three journeyworkers. This ratio provision was subsequently invalidated by the U.S. Court of Appeals for the District of Columbia.

As discussed in greater detail above, during its existence, the helper rule has been the subject of considerable litigation and Congressional attention. The rule has been enjoined by the district court and modified on two occasions as a result of court of appeals decisions. It has twice been implemented for short periods of time. It has also been suspended on two occasions as the result of Congressional action prohibiting Wage and Hour from spending any funds to implement or administer the helper rule. On December 30, 1996, the Department's suspension of the 1982 rule was continued pending completion of this rulemaking.

The helper rule was originally proposed and adopted because it was believed that it would result in a construction workforce on Federal construction projects that more closely reflected private construction's ''widespread'' use of helpers to perform certain craft tasks and, at the same time, effect significant cost savings in federal construction costs. It was also believed

[24] The Department believed that a Regulatory Flexibility Analysis was not necessary because (1) the proposed regulation would not result in any changes in requirements for small businesses; (2) if Wage and Hour were to propose implementing the suspended rule or any of the alternatives considered, it would not be more costly than current regulatory requirements, and therefore, would not have a significant economic impact on a substantial number of small entities; and (3) neither the suspended rule nor any of the alternatives considered could be implemented in a manner that would accomplish the objectives of the statute.

that the expanded definition would provide additional job and training opportunities for unskilled workers, in particular women and minorities. The Department's subsequent efforts to develop enforcement guidelines led it to conclude that administration and enforcement of the revised helper rule would be much more difficult than anticipated, especially in light of the court's invalidation of the ratio provision. Moreover, new data has led the Department to conclude that the use of helpers is not as widespread as previously thought. The Department is also concerned about the possible negative effect of the helper regulations on formal apprenticeship and training programs. These factors led the Department to conclude that the suspended helper rule should not be implemented and that new regulations were needed to govern employment of helpers on DBRA-covered projects. The objective of these regulations is to establish the most appropriate approach to governing employment of helpers on DBRA-covered projects.

(2) Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

The Department received a number of comments regarding the economic impact analysis prepared pursuant to Executive Order 12866. Those comments were discussed in the previous section containing the Department's economic impact analysis. The Department received no separate comments concerning its initial regulatory flexibility analysis.

(3) Number of Small Entities Covered Under the Rule

Size standards for the construction industry are established by the Small Business Administration (SBA), and are expressed in millions of dollars of annual receipts for affected entities, *i.e.,* Major Group 15, Building Construction—General Contractors and Operative Builders, $17 million; Major Group 16, Heavy Construction (non-building), $17 million; and Major Group 17, Special Trade Contractors, $7 million. The overwhelming majority of construction establishments would have annual receipts under these levels. According to the Census, 98.7 percent of these establishments have annual receipts under $10 million. Therefore, for the purpose of this analysis, it is assumed that virtually all establishments potentially affected by this rule would meet the applicable criteria used by the SBA to define small businesses in the construction industry.

As explained above, however, the final rule would cause no impact on small entities since it does not propose to make any changes in requirements applicable to small businesses. Implementation of the suspended rule or any of the alternatives considered would expand the use of helpers and could result in some savings to the Federal government and to recipients of Federal assistance. The impact would depend upon the specifications of the alternative relative to current practice. Even relative to unlimited use, however, possible savings would be very modest, ranging from 0.239 percent of the value of Davis-Bacon annual construction starts (CPS), to 0.359 (adjusted OES), and 0.958 (unadjusted OES) percent and, as discussed in the Department's economic impact analysis in the NPRM, may very well be short-termed.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

There are no reporting or recording requirements for contractors under the final rule. Nor would there be any such requirements under the suspended rule or any of the alternatives considered. The compliance requirements under any rule regarding helpers would merely require contractors who use helpers to do so in accordance with a chosen regulatory framework and pay helpers at least the prevailing wages for the helper classification as set by the Department.

(5) Description of the Steps Taken To Minimize the Significant Economic Impact on Small Entities Consistent with the Objectives of the Davis-Bacon and Related Acts

The Department carefully analyzed the suspended rule, as well as a number of alternative approaches, to determine whether they could be enforced and administered in a manner consistent with the objectives of the Davis-Bacon and Related Acts. Based on this analysis, the Department concluded that the final rule, which adopts the Department's current policy governing employment of helpers, is the only alternative considered that is both consistent with the purposes of the Davis-Bacon and Related Acts and capable of practical and efficient administration, enforcement, and compliance.

The Department also performed an economic impact analysis wherein the Department estimated the relative economic costs under the suspended rule, the various alternatives considered, and the final rule, respectively. As detailed above, the Department concluded from this analysis that any economic cost savings to the Federal government and recipients of Federal assistance, resulting from the increased use of lower-paid helpers under the suspended rule or any of the other alternatives considered, would be relatively modest. The Department therefore determined that implementation of the final rule, which preserves the status quo concerning employment of helpers on DBRA-covered projects, would not have a significant economic impact on a substantial number of small entities.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 1

Administrative practice and procedure, Construction industry, Government contracts, Minimum wages.

29 CFR Part 5

Administrative practice and procedure, Construction industry, Employee benefit plans, Government contracts, Minimum wages, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 29 CFR Part 1 and Part 5 are amended as set forth below:

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

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

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; and the laws listed in appendix A of this part.

2. Section 1.7(d) is revised to read as follows:

§ 1.7 Scope of consideration.

* * * * *

(d) The use of *helpers, apprentices* and *trainees* is permitted in accordance with part 5 of this subtitle.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

3. The authority citation for Part 5 continues to read as follows:

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; 108 Stat. 4104(c); and the statutes listed in section 5.1(a) of this part.

4. In § 5.2, paragraph (n)(1) is amended by removing ''Bureau of Apprenticeship and Training'' each place it appears in the paragraph and inserting in its place ''Office of Apprenticeship Training, Employer and Labor Services'', and paragraph (n)(4) is revised to read as follows:

§ 5.2 Definitions.

* * * * *

(n) * * *

(4) A distinct classification of ''helper'' will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A ''helper'' classification will be added to wage determinations pursuant to § 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

* * * * *

5. Section 5.5 is amended by removing paragraphs (a)(1)(ii)(A)(4) and (a)(1)(v); by removing ''; and'' from the end of paragraph (a)(1)(ii)(A)(3) and inserting in its place a period; by revising paragraph (a)(1)(ii)(A)(1) to read as set forth below; and by removing the phrase ''Bureau of Apprenticeship and Training'' each place it appears in paragraph (a)(4) and inserting in its place ''Office of Apprenticeship Training, Employer and Labor Services'' and removing ''Bureau'' each time it appears in paragraph (a)(4) and inserting in its place ''Office''.

§ 5.5 Contract provisions and related matters.

* * * * *

(a) * * *

(1) * * *

(ii)(A) * * *

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

* * * * *

Signed at Washington, D.C., on this 14th day of November, 2000.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 00–29533 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–27–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2483; MM Docket No. 99–282; RM–9710]

Radio Broadcasting Services; Littlefield, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document dismisses a Petition for Reconsideration filed on behalf of Mountain West Broadcasting directed to the *Report and Order* in this proceeding, which denied the requested allotment of Channel 265C to Littlefield, Arizona, for failure to demonstrate that Littlefield qualifies as a community for allotment purposes. *See* 65 FR 25463, May 2, 2000. The petition for reconsideration is dismissed as it does not meet the limited provisions set forth in the Commission's Rules under which a rule making action will be reconsidered. With this action, this docketed proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, in MM Docket No. 99–282, adopted October 25, 2000, and released November 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–29625 Filed 11–17–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF73

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Tidewater Goby

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the tidewater goby (*Eucyclogobius newberryi*), pursuant to the Endangered Species Act of 1973, as amended (Act). The designation includes 10 coastal stream segments in Orange and San Diego Counties, California, totaling approximately 9 linear miles of streams. Critical habitat includes the stream channels and their associated wetlands, flood plains, and estuaries. These habitat areas provide for the primary biological needs of foraging, sheltering, reproduction, and dispersal, which are essential for the conservation of the tidewater goby.

Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

DATES: The effective date of this rule is December 20, 2000.

ADDRESSES: You may inspect the complete file for this rule at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008, by appointment during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address; telephone 760/431–9440, facsimile 760/431–5902.

SUPPLEMENTARY INFORMATION:

Background

The tidewater goby (*Eucyclogobius newberryi*) is the only member of the monotypic genus *Eucyclogobius* and is in the family Gobiidae. This fish was first described in 1857 by Girard as *Gobius newberryi.* Based on Girard's specimens, Gill (1862) erected the genus *Eucyclogobius* for this distinctive species. The majority of scientists have accepted this classification (*e.g.*, Bailey *et al.* 1970, Miller and Lea 1972, Hubbs *et al.* 1979, Robins *et al.* 1991, Eschmeyer *et al.* 1983). A few older works including Ginsburg (1945) placed the tidewater goby and the eight related eastern Pacific species into the genus *Lepidogobius.* This classification includes the currently recognized genera *Lepidogobius*, *Clevelandia*, *Ilypnus*, *Quietula*, and *Eucyclogobius.* Birdsong *et al.* (1988) coined the informal *Chasmichthys* species group, recognizing the phyletic relationship of the eastern Pacific group with species in the northwestern Pacific.

Crabtree's (1985) allozyme work on tidewater gobies from 12 localities throughout the range shows fixed allelic differences at the extreme northern (Lake Earl and Humboldt Bay) and southern (Canada de Agua Caliente, Winchester Canyon, and San Onofre Lagoon) ends of the range. The northern, central, and southern California populations are genetically distinct from each other. The more centrally distributed populations are relatively similar to each other (Brush Creek, Estero Americano, Corcoran Lagoon, Arroyo de Corral, Morro Bay, Santa Ynez River, and Jalama Creek). Crabtree's results indicate that there is a low level of gene flow (movement of individuals) between the populations sampled in the northern, central, and southern parts of the range. However, Lafferty *et al.* (1999a) point out that Crabtree's sites were widely distributed geographically, and may not be indicative of gene flow on more local levels.

Dawson *et al.* (2000) conducted an analysis of mitochondrial DNA from populations ranging from Humboldt to San Diego counties. Results indicated the southern California populations of tidewater gobies diverged from other tidewater gobies along the California coast long ago. These southernmost populations may have begun diverging from the remainder of the gobies in excess of 1,000,000 years ago. We recently proposed recognition of the tidewater gobies in southern California (*i.e.*, Orange and San Diego Counties) as an endangered distinct population segment (DPS) (June 24, 1999; 64 FR 33816).

The tidewater goby is a small elongate fish seldom exceeding 50 millimeters (mm) (2 inches (in.)) standard length. This fish is characterized by large, dusky pectoral fins and a ventral sucker-like disk formed by the complete fusion of the pelvic fins. Tidewater gobies are nearly transparent, with a mottled brownish upper surface, and often with spots or bars on dusky dorsal and anal fins. The mouth is large and oblique with the upper jaw extending nearly to the rear edge of the eye. The eyes are widely spaced. The tidewater goby is a short-lived species, apparently having an annual life cycle (Eschmeyer and Herald, 1983, Irwin and Soltz 1984, Swift *et al.* 1997).

The tidewater goby is endemic to California, and is unique in that it is restricted to coastal brackish water habitats. Historically, the species ranged from Tillas Slough (mouth of the Smith River, Del Norte County) near the Oregon border to Agua Hedionda Lagoon (northern San Diego County). Within the range of the tidewater goby, shallow, brackish water conditions occur in two relatively distinct situations: 1) the upper edge of tidal bays, such as Tomales, Bolinas, and San Francisco bays near the entrance of freshwater tributaries, and 2) the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons, along most of the length of California. Few well documented records of this species are known from marine environments outside of coastal lagoons and estuaries (Swift *et al.* 1989). Historically, the southern population of tidewater gobies occupied the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons from Aliso Creek in Orange County, to Agua Hedionda Lagoon in Northern San Diego County.

The tidewater goby is often found in waters of relatively low salinities (around 10 parts per thousand (ppt)) in the uppermost brackish zone of larger estuaries and coastal lagoons. However, the fish can tolerate a wide range of salinities and is frequently found throughout lagoons (Swift *et al.* 1989, 1997; Worcester 1992, Worcester and Lea 1996). Tidewater gobies regularly range upstream into fresh water, and downstream into water of up to 28 ppt salinity (Worcester 1992, Swenson 1995). Specimens have also been collected at salinities as high as 42 ppt (Swift *et al.* 1989). The species' tolerance of high salinities (up to 60 ppt for varying time periods) likely enables it to withstand exposure to the marine environment, allowing it to colonize or reestablish in lagoons and estuaries following flood events (Swift *et al.* 1989; Worcester and Lea 1996; Lafferty *et al.* 1999a). Tidewater gobies in southern California appear to be highly tolerant of varying salinities. Tidewater gobies were collected in May 2000 from French and Aliso lagoons, San Diego County, two lagoons located within 500 m of each other. Although both lagoons had hundreds of larval, juvenile and adult tidewater gobies, the salinities of the two lagoons varied markedly. Aliso Lagoon consisted of entirely fresh water, while French Lagoon ranged from 45 to 51 ppt (Service field data 2000).

Tidewater gobies are usually collected in water less than 1 meter (m) (3 feet (ft)) deep and many localities have no area deeper than this (Wang 1982, Irvin and Soltz 1984; Swenson 1995). However, they have been found in waters over 1 m (3ft) in depth (Worcester 1992, Lafferty and Altstatt 1995; Swift *et al.* 1997; Smith 1998). In lagoons and estuaries with deeper water, the lack of collections of tidewater gobies in depths greater than 1 m (3 ft) may be due to the inadequacy of the sampling methods, rather than the lack of gobies (Worcester 1992, Lafferty 1997, Smith 1998).

Tidewater gobies often migrate upstream into tributaries up to 2.0 kilometers (km) (1.2 miles) (mi) from the estuary. However, in San Antonio Creek and the Santa Ynez River in Santa Barbara County, tidewater gobies are often collected 5–8 km (3–5 mi) upstream of the tidal or lagoonal areas, sometimes in beaver-impounded sections of streams (Swift *et al.* 1989). The fish move upstream in summer and fall as sub-adults and adults. There is little evidence of reproduction in these upper areas (Swift *et al.* 1997). Tidewater gobies in Southern California have been found as far as 5 km (3 mi) from the estuary in the Santa Margarita River (Holland and Swift 1992; Dan Holland, Camp Pendleton Amphibian and Reptile Survey, pers. comm. 2000).

The life of tidewater gobies is tied to the annual hydrologic cycles of the coastal lagoons and estuaries (Swift *et al.* 1989, 1994; Swenson 1994, 1995). Water in estuaries, lagoons and bays is at its lowest salinity during the winter and spring as a result of precipitation and runoff. During this time, high runoff causes the sandbars at the mouths of the lagoons to breach, allowing mixing of the relatively fresh estuarine and lagoon waters with seawater. This annual building and breaching of the sandbars is part of the normal dynamics of the systems in which the tidewater goby has evolved (Zedler 1982, Lafferty and Alstatt 1995, Heasly *et al.* 1997). The

time of sandbar closure varies greatly among systems and years, and typically occurs from spring to late summer. Summer salinity in the lagoon depends upon the amount of freshwater inflow at the time of sandbar formation (Zedler 1982, Heasly *et al.* 1997).

Males begin digging breeding burrows 75 to 100 mm (3–4 in.) deep, usually in relatively unconsolidated, clean, coarse sand averaging 0.5 mm (0.02 in.) in diameter, in April or May (Swift *et al.* 1989; Swenson 1994, 1995). Swenson (1995) demonstrated that tidewater gobies prefer this substrate in the laboratory, but also found tidewater gobies digging breeding burrows in mud in the wild (Swenson 1994). Page (C. Page, Biological Consultant, pers. com. 2000) found that tidewater gobies commonly built breeding burrows and spawned in silt-dominated muddy habitats. Inter-burrow distances range from about 5 to 275 centimeters (cm) (2 to 110 in) (Swenson 1995). Females lay about 100 to 1,000 eggs per clutch, averaging 400 eggs per clutch, with clutch size depending on the size of both the female and the male. Females can lay more than one clutch of eggs over their lifespan, with captive females spawning 6–12 times (Swenson 1995). Spawning frequency in wild females probably varies due to fluctuations in food supply and other environmental conditions. Male gobies remain in the burrow to guard the eggs that are attached to sand grains in the walls of the burrow. Males also spawn more than once per season (Swenson 1995) and have been observed guarding multiple clutches in the same burrow (Swift *et al.* 1989, Swenson 1995). Males frequently go at least for a few weeks without feeding and this probably contributes to mid-summer mortality (Swift *et al.* 1989; Swenson 1994, 1995).

Reproduction peaks during spring to mid-summer (late April or May to July) and can continue into November or December depending on the seasonal temperature and rainfall. Reproduction sometimes increases slightly in the fall (Swift *et al.* 1989). Reproduction takes place when the water temperature is from 15–20 degrees Celsius (°C) (60–65 degrees Fahrenheit (°F)) and at salinities of 0–25 ppt (Swift *et al.* 1989; Swenson 1994, 1995). Typically, winter rains and cold weather interrupt spawning, but in some warm years reproduction may occur throughout the year (Goldberg 1977, Wang 1984). Goldberg (1977) showed by histological analysis that females have the potential to lay eggs all year in Southern California, but this rarely has been documented. Length-frequency data from southern and central California (Swift *et al.* 1989; Swenson 1994, 1995) and age data analysis from central California populations (Swift *et al.* 1997) indicate that tidewater gobies typically live one year or less, although some may overwinter upstream (Irwin and Soltz 1984).

Tidewater goby eggs hatch in 7–10 days at water temperatures of 15–18 °C (60–65 °F) at lengths of 4–7 mm (0.2 in.). The newly hatched larvae are planktonic (float in water column) for one to a few days and once they reach 8–18 mm (0.3–0.8 in.) in length, move to substrate oriented (living on or near the bottom of the estuary or lagoon). All larger size classes are substrate oriented and little habitat segregation by size has been noted (Swift *et al.* 1989, Swenson 1995). However, Worcester (1992) found that larval gobies in Pico Creek Lagoon tended to use the deeper portion of the lagoon. Individuals collected in marshes appear to be larger (43–45 mm (1.7–1.8 in.) standard length) than those collected in open areas of lagoons (32–35 mm (1.3–1.4 in.) standard length) (Swenson 1995).

Studies of the tidewater goby's feeding habits suggest that it is a generalist. At all sizes examined, tidewater gobies feed on small benthic (bottom-dwelling) invertebrates, crustaceans (usually mysids, amphipods, and ostracods), snails, and aquatic insect larvae, particularly flies (dipterans) (Irwin and Soltz 1984; Swift *et al.* 1989; Swenson 1994, 1995). The food items of the smallest tidewater gobies (4–8 mm (0.2–0.3 in.)) have not been examined, but they probably feed on unicellular phytoplankton or zooplankton similar to many other early stage larval fishes (Swenson and McCray 1996).

Tidewater gobies are preyed upon by native species such as prickly sculpin (*Cottus asper*), staghorn sculpin (*Leptocottus armatus*), starry flounder (*Platichthys californicus*) (Swift *et al.* 1997), and possibly steelhead (*Oncorhynchus mykiss*) (Swift *et al.* 1989). Tidewater gobies were found in stomachs of about 6 percent of 120 fish of the former three species examined, and comprised about 20 percent by volume of the prey. Predation by the native Sacramento perch (*Archoplites interruptus*) and tule perch (*Hysterocarpus traski*) may have prevented tidewater gobies from inhabiting the San Francisco Bay delta (Swift *et al.* 1989), although direct documentation to support this hypothesis is lacking.

Several non-native fish species, such as largemouth bass and yellowfin gobies, also prey on tidewater gobies. The shimofuri goby (*Tridentiger bifasciatus*), which has become established in the San Francisco Bay region (Matern and Fleming 1995), may compete with the smaller tidewater goby, based on dietary overlap (Swenson 1995) and foraging and reproductive behavioral alterations in captivity. Shimofuri gobies eat juvenile tidewater gobies in captivity, but usually were unable to catch subadult and adult tidewater gobies (Swenson and Matern 1995). Evidence of predation or competition in the wild is lacking (Swenson 1999), although Wang (1984) found that yellowfin gobies prey on tidewater gobies. Shapovalov and Taft (1954) documented the non-native striped bass (*Morone saxatilis*) preying on tidewater gobies in Waddell Creek Lagoon, but stated that striped bass were found only infrequently in the areas inhabited by the goby. Non-native sunfishes and black bass (centrarchids) have been introduced in or near coastal lagoons and may prey heavily on tidewater gobies under some conditions. Although tidewater gobies disappeared soon after centrarchids were introduced at several localities, direct evidence that the introductions led to the extirpations is lacking (Swift *et al.* 1989, 1994; Rathbun et al. 1991). Predation by young-of-the-year largemouth bass (*Micropterus salmoides*) on tidewater gobies was documented in one system (Santa Ynez River), where tidewater gobies accounted for 61 percent of the prey volume of 55 percent (10 of 18) of the juvenile bass sampled (Swift *et al.* 1997).

In Southern California, non-native sunfish (Centrarchidae), largemouth bass, and channel catfish (*Ictulurus punctatus*) are all suspected of impacting tidewater goby populations through predation in the San Mateo and Santa Margarita lagoons (Swift and Holland 1998). Yellowfin gobies are thought to have contributed to the extirpation of tidewater gobies from the Santa Margarita River (Swift *et al.* 1994). The tidewater goby population at Cockleburr Creek is reduced presumably due to predation and competition from the large numbers of non-native mosquitofish (Swift and Holland 1998).

Non-native African clawed frogs (*Xenopus laevis*) also prey upon tidewater gobies (Lafferty and Page 1997), although this is probably not a significant source of mortality due to the limited distribution of this species in tidewater goby habitats. The frogs are killed by the higher salinities that occur when the lagoons are breached (Glenn Greenwald, Service, pers. obs.).

Lafferty *et al.* (1999a) monitored persistence of 17 tidewater goby populations in Santa Barbara and Los

Angeles counties during and after the heavy winter flood flows of 1995. All 17 populations persisted after the high flows and no significant changes in population sizes were detected. In addition, gobies apparently colonized Canada Honda, approximately 10 km (6 mi) from the closest known population during or after the flooding (Swift *et al.* 1997). Lafferty *et al.* (1999a, 1999b) proposed that flood events such as those that occurred in 1995, flush gobies out into the ocean's littoral zone where they are dispersed by longshore currents to other estuaries generally south along the coast. As Swenson (1999) points out, Lafferty's work suggests that, because prevailing longshore currents on the California coast are southerly, populations at the northern ends of geographic clusters of populations are more likely than southern populations to serve as source populations. Lafferty *et al.* (1999b) estimated the extirpation and recolonization rates for 37 populations in Southern California from over 250 presence-absence records and found a high rate of recolonization. The results suggest that there is more gene flow among populations within geographic clusters (e.g., northern California, San Francisco Bay, Santa Cruz, San Luis Obispo, and Southern California) than previously believed. They also found a positive association between tidewater goby presence and wet years, suggesting that flooding may contribute to recolonization of sites from which gobies have temporarily disappeared.

Lagoons in which tidewater gobies are found range in size from less than 0.10 hectare (ha) (0.25 acres (ac)) of surface area to about 800 ha (2,000 ac). Most lagoons with tidewater goby populations are in the range of 0.5–5.0 ha (1.25–12.5 ac). Surveys of tidewater goby localities and historical records indicate that persistence of tidewater goby populations is related to size, configuration, location, and access by humans (Swift *et al.* 1989, 1994). Water surface areas smaller than about 2 ha (5 ac) generally have histories of extinction, extirpation, or population reduction to very low levels, although some as small as 0.35 ha (0.86 ac) have been identified as having persistent tidewater goby populations (Swift *et al.* 1997, Lafferty 1997, Heasly *et al.* 1997). As evidenced by the Canada Honda colonization (Swift *et al.* 1997), relatively long distances from the nearest source populations are not obstacles to colonization or reestablishment. Many of the small lagoons with histories of intermittent populations are within 1–2 km (0.6–1.2 mi) of larger lagoons that can act as sources of colonizing gobies.

Today, the most stable and largest populations are in lagoons and estuaries of intermediate sizes, 2–50 ha (5–125 ac) that have remained relatively unaffected by human activities, although some systems that are heavily affected or altered also have relatively large and stable populations (e.g., Humboldt Bay, Humboldt County; Santa Clara River, Ventura County; Santa Ynez River, Santa Barbara County; and Pismo Creek, San Luis Obispo County). In many cases, these probably have provided the colonists for the smaller ephemeral sites (Swift *et al.* 1997; Lafferty *et al.* 1999b).

Previous Federal Action

We first classified the tidewater goby as a Category 2 species in 1982 (47 FR 58454). It was reclassified as a Category 1 species in 1991 (56 FR 58804) based on status and threat information in Swift *et al.* (1989). At those times, Category 2 species were those taxa for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a listing proposal. Category 1 species, now referred to as candidate species, were those taxa for which we had on file, sufficient information on biological vulnerability and threats to support a proposal to list as threatened or endangered. On October 24, 1990, we received a petition from Dr. Camm Swift, Associate Curator of Fishes at the Los Angeles Museum of Natural History, to list the tidewater goby as endangered. Our finding that the requested action may be warranted was published on March 22, 1991 (56 FR 12146). A proposal to list the tidewater goby as an endangered species was published on December 11, 1992 (57 FR 58770). On March 7, 1994, the tidewater goby was listed as an endangered species (59 FR 5494). At that time, we did not designate critical habitat, because critical habitat was not then determinable and a final decision on critical habitat required detailed information on the possible economic effects of designation. At that time, we did not have sufficient information to perform the economic analysis.

On September 18, 1998, the Natural Resources Defense Council, Inc., filed a lawsuit in Federal District Court in California against us for failure to designate critical habitat for the tidewater goby. On April 5, 1999, the court ordered that the ''Service publish a proposed critical habitat designation for the tidewater goby in 120 days'' (*Natural Resources Defense Council, Inc.* v. *U. S. Department of the Interior et al.,* CV 98–7596, C.D. Cal.).

On June 24, 1999, we proposed to delist the northern populations of the tidewater goby and to retain the tidewater goby populations in Orange and San Diego Counties as endangered based on our reevaluation of the species status throughout its range (64 FR 33816). We determined that north of Orange County more populations exist than were known at the time of the listing, that threats to those populations are less severe than previously believed, and that the tidewater goby has a greater ability to recolonize habitats from which it is temporarily absent than was known in 1994 (64 FR 33816). Moreover, we believe that the populations of tidewater gobies in Orange and San Diego Counties are genetically distinct and represent a DPS. We believe that this DPS, comprised of gobies from only eight localities, continues to be threatened by habitat loss and degradation, predation and competition by non-native species, and extreme weather and streamflow conditions. Therefore, we proposed that populations north of Orange County be removed from the List of Endangered and Threatened Animals, and that the southern DPS of tidewater gobies be retained as an endangered species on the list.

On August 3, 1999, we proposed critical habitat for the tidewater goby (64 FR 42250). We reopened the comment period on October 15, 1999 (64 FR 55892), to announce the time and location of public hearings and provide for additional public comment. This second comment period closed on November 30, 1999. On June 28, 2000, we published a notice (65 FR 39850) announcing the reopening of the comment period on the draft proposal to designate critical habitat for the tidewater goby and a notice of availability of the draft economic analysis on the proposed determination. The comment period was opened for an additional 30 days, closing on July 28, 2000.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon

a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires consultations on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species and its supporting documentation. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.*, gray literature).

Habitat is often dynamic, and species may move from one area to another over time. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the tidewater goby, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, data collected on the U.S. Marine Corps Base, Camp Pendleton (Camp Pendleton), data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, and comments received on the proposed rule and economic analysis.

Primary Constituent Elements

In accordance with section 3(5) of the Act, for habitat within the geographic range occupied by the species, critical habitat is defined as specific areas that contain those physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The habitat features (primary constituent elements) that provide for the primary biological needs of foraging, sheltering, reproduction, and dispersal that are essential for the conservation of the species are described at 50 CFR 424.12, and include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring; and

Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent habitat elements for the tidewater goby were determined from studies on their habitat requirements and population biology (Lafferty *et al.* 1999a, 1999b; Manion 1993; Swensen 1994, 1995, 1999; Swift *et al.* 1989) and include habitat components that are essential to the biological needs of foraging, nest construction, spawning, sheltering, and dispersal. The foundation for the primary constituent elements of the tidewater goby is provided by coastal lagoons and estuaries supported by a relatively natural hydrologic regime and an environment with so few exotic fishes that tidewater gobies are unaffected by their presence. These elements are described in greater detail below.

Coastal lagoons and estuaries with natural hydrology generally provide several specific habitat elements that gobies require. For instance, aquatic systems supported by a natural hydrological regime are often characterized by a combination of slightly different habitat types: freshwater creek, brackish lagoon, and coastal salt marsh. This habitat variance generally ensures that some deep pockets of permanent water remain as refugia during times of drought; provides for a variety of substrate types, of which sand and silt are necessary for construction of burrows; and provides for structural complexity of the stream channel, which supports various types of aquatic and emergent vegetation. This structural complexity and presence of vegetation may ensure that all gobies are not washed out to sea during flood events (Swensen 1995). Lastly, lagoons and estuaries with a natural hydrological regime and corresponding habitat complexity generally provide for the diversity of prey species (*e.g.*, aquatic invertebrates, including aquatic insect larvae, ostracods, crustaceans, and snails) that gobies require.

The second constituent element of tidewater goby habitat is a system that is free from exotic species or nearly so. Exotic fishes can debilitate, perhaps to the point of extirpation, tidewater goby populations through competition and predation. Largemouth bass, black bass, sunfishes, striped bass, shimofuri gobies, and yellowfin gobies all appear to prey on tidewater gobies. Keeping exotic species out of occupied goby habitats, and eliminating them from potential reestablishment sites will be crucial to the conservation of the goby.

Criteria Used To Identify Critical Habitat

We have limited our designation to Orange and San Diego Counties, because it is within this area that tidewater gobies are threatened with extinction and essential habitat areas for this species can be identified. Currently, within Orange and San Diego Counties no known populations occur outside of Camp Pendleton. Populations on Camp Pendleton fluctuate and most have temporarily been extirpated on several occasions. Because there is a total of only eight populations currently known within Orange and San Diego Counties, a random event or combination of events could affect all eight populations and cause the species to be lost from those counties. Furthermore, because the best available information (Dawson *et al.* 2000) indicates that tidewater gobies in Orange and San Diego Counties comprise a unique genetic unit, we proposed this population for listing as a DPS (for additional discussion on the DPS, see the June 24, 1999, proposed rule 64 FR 33816).

Our critical habitat designation must take into consideration the fact that the current information indicates that tidewater goby populations north of Orange County are not in danger of extinction or likely to become so in the foreseeable future. North of Orange County, fluctuations in the number of populations of tidewater gobies are also common. However, these populations are of sufficient number (ranging from about 40 during drought conditions to about 80 under wet conditions) and distribution such that they are not in danger of extinction now or in the foreseeable future. The last pronounced drought (1987–1991) did not threaten the goby north of Orange County with extinction. In nearly all areas where populations were reported absent due to drought or a combination of drought and human-caused factors, gobies repopulated naturally shortly after a return to wetter conditions. Thus, a return to drought conditions does not mean endangerment for the goby populations north of Orange County.

Furthermore, most of the lagoons and estuaries that no longer support gobies north of Orange County lost them decades ago when they were altered in ways that severely, and for all practicable purposes permanently, affected the hydrology, such that they could no longer support gobies. Therefore, while there are some exceptions, north of Orange County tidewater gobies do live in most of the estuaries where they can live (not withstanding normal extirpation and re-colonization within the metapopulation (interconnected subpopulations)). Thus, this historical loss of habitat did not result in a continuing trend toward extinction. In effect, the information on the species current status and trends indicates that, for the tidewater goby populations north of Orange County, the 1994 listing rule misinterpreted the risk of extinction such that the goby was mistakenly listed as endangered (for additional discussion, see the proposed delisting rule 64 FR 33816).

This information was the basis for the delisting proposal, which addressed errors in the original 1994 listing for the tidewater goby populations north of Orange County, along with current goby status and threats. We have received a substantial number of comments on the proposed delisting. However, the main reaction expressed in the comment letters from the public was that the Service, armed with very little new information, was, in its delisting proposal, reversing its position on the status of the goby without basis. The public comment letters also expressed concern that the delisting proposal was arguing that the goby was in less danger of extinction now than in 1994. These comments included carefully reasoned and informed set of suggestions for improving our analysis of current risk of extinction, and we consider this designation in light of that information. At this time, we continue to believe that the 1994 listing rule misinterpreted the risk of extinction and that listing under the Act is not necessary for the tidewater goby populations north of Orange County. However, we want to ensure that we have made the best decision possible and intend to reopen the comment period on the proposed delisting in the near future.

We have not yet made a final determination on the delisting proposal. Therefore, the entire species remains listed, and the Act requires us to designate critical habitat for the species. The facts and analysis described above, however, are highly relevant to the question of what areas constitute critical habitat for the species. In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' This requires more than that the habitat be essential for the long-term survival and well-being of the species. Rather, the habitat must be essential for the ''conservation'' of the species. Under the Act, ''conservation'' is a technical term, defined as the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary. In

the case of a species that, although technically listed, does not meet the standard for listing, *e.g.*, it should be delisted, but that action has not yet taken place, no methods or procedures are required to bring the species to the point where listing is no longer necessary. In other words, that species is already ''conserved,'' as that term is defined in the Act. Thus, as a technical legal matter, no areas can be ''essential to the conservation'' of a species that currently does not warrant listing.

This is precisely the situation with respect to the northern populations of the goby. The best available biological information indicates that listing under the Act is already not necessary for the tidewater goby populations north of Orange County. In other words, the northern populations are already conserved, as that term is used in the Act, and consequently no areas are essential to the conservation of the northern populations. Moreover, we find that no areas north of Orange County are essential to the conservation of the populations in Orange and San Diego Counties. Therefore, the habitat areas for the northern population are not essential to the conservation, as defined in the Act, of any of the populations, or the species as a whole. We are not suggesting that there are no threats to the goby populations north of Orange County or that these populations would not benefit from other actions to manage or protect the species or its habitat. However, given the technical legal requirements of the Act, critical habitat designation is not the appropriate vehicle for addressing this need. Under the Act's definition of critical habitat, no areas north of Orange County qualify for designation as critical habitat for the species. As we continue to analyze the proposed delisting, we will evaluate the best biological information available. If we identify additional areas that are essential to the conservation of the species, we will revise this critical habitat designation as appropriate.

The population in Orange and San Diego Counties is endangered because some of the places where it used to live have been altered so much that they are unsuitable for gobies. These remaining populations, currently eight, fluctuate, and periodically go extinct, only to be repopulated later by colonists from nearby populations. The conservation of the goby depends upon the existence of enough habitat areas to support this natural pattern (Swift *et al.* 1989, Lafferty *et al.* 1999). All of the remaining habitat areas which are presently inhabited by gobies are subject to various threats to habitat quality (see analysis in 64 FR 33816) and require special management considerations or protection. These are designated as critical habitat.

In accordance with section 3(5)(A)(ii) of the Act, areas outside the geographical area occupied by the species at the time it is listed may meet the definition of critical habitat upon determination that they are essential for the conservation of the species. The long-term survival of tidewater gobies in Orange and San Diego Counties depends upon the presence of enough habitat areas to support the natural pattern of local extinctions and recolonizations (Swift *et al.* 1989, Moyle *et al.* 1995, Lafferty *et al.* 1999b, Swenson 1999) that characterize its population biology. The eight fluctuating populations where gobies exist today are insufficient in number and quality to remove gobies in this part of the range from a high risk of extinction. Thus, unoccupied habitats which can support gobies in the future play an essential role in the conservation of the goby. To determine which unoccupied areas are essential and should be designated as critical habitat, we evaluated which unoccupied areas could support tidewater gobies, and, by virtue of their geographical distribution, provide for a network of habitat areas supporting gobies and acting as sources of recolonization for other nearby habitat areas.

Two sites that fulfill these criteria are Aliso Creek, Orange County, and Agua Hedionda Lagoon, San Diego County. The tidewater goby population at Aliso Creek was intensively studied in the 1970s, and the habitat parameters that supported tidewater gobies when they occurred there are well documented (Swift *et al.* 1989). Habitat parameters have not changed since tidewater gobies occupied the creek (Camm Swift, ichthyologist consultant, pers. comm. 2000, see Summary of Comments and Recommendations section). In Agua Hedionda Lagoon, recent fish surveys found cheekspot (*Ilypnus gilberti*) and shadow gobies (*Quietula y-cauda*), species which can co-occur with, and have similar habitat requirements to tidewater gobies indicating that suitable conditions may currently exist in the lagoon to support tidewater gobies (MEC 1995). More recently, a study carefully examined the suitability of habitat in Agua Hedionda Lagoon specifically for tidewater gobies. The study examined habitat parameters such as substrate, salinity, water temperature, water depth, and fish species assemblage, and compared these with values in habitats occupied by tidewater gobies. Results from this study demonstrated that the lagoon can currently support tidewater gobies (Merkel and Associates 1999a and 1999b, see Summary of Comments and Recommendations section). Because suitable habitat exists at both of these lagoons, and because additional tidewater goby localities are within 10 miles of these lagoons, we find that Aliso Creek, Orange County, and Agua Hedionda Lagoon, San Diego County can support tidewater gobies in the future and that these two estuaries contribute to the network of habitat areas that can support tidewater gobies and act as sources of recolonization following the natural pattern of local extinction in other nearby habitat areas. We are designating Aliso Creek, Orange County, and Agua Hedionda Lagoon, San Diego County, because they are essential to the conservation of tidewater gobies.

In defining critical habitat boundaries, it was not possible to exclude existing man-made features and structures within the area designated, such as buildings, roads, railroads, and other features. These features will not themselves contain one or more of the primary constituent elements. Federal actions limited to those features, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, in determining areas that are essential to conserve tidewater goby, we used the best scientific information available to us. The critical habitat areas described below constitute our best assessment of areas needed for the species' conservation and recovery.

Critical Habitat Designation

For the reasons described above, the following general areas are designated as critical habitat. Where delineated, the 50-year flood plain is used to establish boundaries within the designated waterways. In areas where the 50-year flood plain is not delineated, the presence of alluvial soils (soils deposited by streams), obligate and facultative wetland vegetation, abandoned river channels, or evidence of high water marks will be used to determine the extent of the flood plain and the boundaries for the designation (see legal descriptions for exact habitat boundaries):

1. Aliso Creek (Orange County) and its associated lagoon and marsh from the Pacific Ocean to approximately 1.0 km (0.6 mi) upstream;

2. San Mateo Creek and its associated lagoon and marsh, from the Pacific Ocean to approximately 1.3 km (0.9 mi) upstream;

3. San Onofre Creek and its associated lagoon and marsh from the Pacific

Ocean to approximately 0.6 km (0.4 mi) upstream;

4. Las Flores Creek and its associated lagoon and marsh from the Pacific Ocean to Interstate 5 (approximately 1.0 km (0.6 mi));

5. Hidden Creek and its associated lagoon and marsh from the Pacific Ocean to Interstate 5 (approximately 0.8 km (0.5 mi));

6. Aliso Creek and its associated lagoon and marsh from the Pacific Ocean to Interstate 5 (approximately 0.7 km (0.4 mi));

7. French Creek and its associated lagoon and marsh from the Pacific Ocean to Interstate 5 (approximately 0.7 km (0.4 mi));

8. Cockleburr Creek and its associated lagoon and marsh, from the Pacific Ocean to Interstate 5 (approximately 1.0 km (0.6 mi));

9. Santa Margarita River from the Pacific Ocean to a point approximately 5.0 km (3.1 mi) upstream; and

10. Agua Hedionda Lagoon and its associated marsh and creek from the Pacific Ocean to a point approximately 3.7 km 2.3 mi) upstream.

Although the majority of land being proposed for designation is under Federal administration and management, some estuary and riparian habitats are on State, county, city, and private lands. The Aliso Creek segment, Orange County, is owned by the County of Orange, the City of South Laguna, and private interests. Agua Hedionda Lagoon is owned by the San Diego Gas and Electric Company, which leases to the City of Carlsbad, and public and private interests. The segments on San Mateo Creek, San Onofre Creek, Las Flores Creek, Hidden Creek, Aliso Creek, French Creek, Cockleburr Creek, and the Santa Margarita River are on Camp Pendleton.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. In 50 CFR 402.02, ''jeopardize the continued existence'' (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect newly designated critical habitat and they have retained discretionary involvement in the action. Further, some Federal agencies may have conferenced with us on proposed critical habitat. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the tidewater goby or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Activities such as water diversion or impoundment, groundwater

pumping, artificial lagoon breaching to protect urban or agricultural areas from inundation, or any other activity that alters water quality or quantity to an extent that water quality becomes unsuitable to support gobies, or any activity that significantly affects the natural hydrologic function of the lagoon system;

(2) Activities such as coastal development, sand and gravel mining, channelization, dredging, impoundment, or construction of flood control structures, that alter watershed characteristics or appreciably alter stream channel and/or lagoon morphology; and

(3) Activities which could lead to the introduction of exotic species, especially exotic fishes, into occupied or potential goby habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species. In those cases, it is highly unlikely that additional modification to the action would be required as a result of designating critical habitat. However, critical habitat may provide benefits toward recovery when designated in areas currently unoccupied by the species.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with us on activities that may effect the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the U. S. under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Road construction, right of way designation, or regulation of agricultural activities by Federal agencies;

(4) Some military activities on the Camp Pendleton;

(5) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(6) Construction of communication sites licensed by the Federal Communications Commission; and

(7) Activities funded or authorized by Federal agencies.

This section serves in part as a general guide to clarify activities that may affect or destroy or adversely modify critical habitat. However, specific Federal actions will still need to be reviewed by the action agency. If the agency determines the activity may affect critical habitat, they will consult with us under section 7 of the Act. If it is determined that the activity is likely to adversely modify critical habitat, we will work with the agency to modify the activity to minimize negative impacts to critical habitat. We will work with the agencies and affected public early in the consultation process to avoid or minimize potential conflicts and, whenever possible, find a solution that protects listed species and their habitat while allowing the action to go forward in a manner consistent with its intended purpose.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503–231–2063, facsimile 503–231–6243).

Summary of Comments and Recommendations

In the August 3, 1999, proposed rule (64 FR 42250), we requested interested parties to submit factual reports or information that might contribute to development of a final rule. The 60-day comment period closed on October 4, 1999. We contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties. We reopened the comment period on October 15, 1999, (64 FR 55892) to announce the time and location of public hearings and provide for additional public comment. We published public notices of the proposed rule in the *North County Times*, the *San Diego Union Tribune*, and the *Orange County Register,* on October 18, 1999, which invited general public comment. We posted copies of the proposed rule and draft economic analysis on our internet site. We held two hearings on November 4, 1999, in Carlsbad, California. Notices appeared in the previously named newspapers on October 18, 1999, to announce the extension of the public comment period until November 30, 1999, and the scheduling of the public hearings in Carlsbad, California, on November 4, 1999. Transcripts of the hearings are available for inspection (see **ADDRESSES** section). On June 28, 2000, we published a notice (65 FR 39850) announcing the reopening of the comment period and the availability of the draft economic analysis on the proposed determination. The comment period was opened for an additional 30-days, closing on July 28, 2000.

We requested four ichthyologists (fish biologists) familiar with the species to review the proposed critical habitat designation. However, only two responded by the close of the comment period. Both of these reviewers provided valuable information about the biology, status, and range of the species, and suggested adding areas to the critical habitat designation. These comments are addressed in this section, and relevant data provided by the reviewers has also been incorporated into the ''Background'' section.

We received a total of 40 written and 28 oral comments during the public comment periods. Of those written comments, eight supported critical habitat designation, 30 opposed critical habitat designation, and two provided additional information. Of those oral comments, 3 supported critical habitat designation, 24 opposed critical habitat designation, and one provided additional information. Written and oral comments were received from one Federal agency, two state agencies, six local agencies, and 28 private organizations, companies, and individuals. Several commenters commented multiple times, both written and orally. All comments received were reviewed for substantive issues and new data regarding critical habitat and the biology and status of the tidewater goby. We address all comments received during the comment periods and public hearing testimony in the following summary of issues. Comments of a

similar nature are grouped into a single issue.

Issue 1: Procedural and Legal Compliance

The following comments and responses involve issues related to public involvement in the designation process and compliance with the Act and other laws, regulations, and policies.

Comment 1a: The creation of the Orange and San Diego Counties distinct population segment of the tidewater goby is invalid because it was created as part of a proposal to delist the tidewater goby in a portion of its range. The Service should first delist the species throughout its entire range, then propose the DPS separately.

Our Response: This final rule designating critical habitat for the tidewater goby finalizes the proposed designation of critical habitat for the tidewater goby (64 FR 42250) that addressed the conservation of the species throughout its entire range. The proposed rule to create a DPS and remove the northern populations of the tidewater goby from the list of threatened and endangered species was a separate proposed rule (64 FR 33816). In the section above titled ''*Criteria Used To Identify Critical Habitat*,'' we provide a detailed explanation as to the basis for this designation, including how this critical habitat designation relates to the proposed DPS and delisting. As discussed in our response to comment 1b, we must make a determination regarding critical habitat for the entire species at this time, based on the best information available.

Comment 1b: The Service cannot designate critical habitat on a proposed Distinct Population Segment (DPS). Because the Service has designated critical habitat for a DPS that has not yet been listed in a final rule, the proposed critical habitat designation is invalid.

Our Response: The Act requires us to designate critical habitat for the species, not the proposed DPS. Although our designation is limited to Orange and San Diego Counties, it is not because we are designating critical habitat for the proposed DPS, but rather those are the areas that we have identified that meet the definition of critical habitat for the species. In the section above titled ''*Criteria Used To Identify Critical Habitat*,'' we provide a detailed explanation as to the basis for this designation, including how the designation relates to the proposed DPS.

Comment 1c: The Service fails to include any economic analysis in its proposed rule, and thus gives inadequate notice of the action proposed.

Our response: In the proposed rule, we acknowledged that section 4(b)(2) of the Act requires us to consider the economic and other relevant impacts of designating a particular area as critical habitat. We also stated that we would conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination and announce the availability of the draft economic analysis with a notice in the **Federal Register**. We conducted an economic analysis. On June 28, 2000 (65 FR 39850), we published a notice in the **Federal Register** announcing the availability of the draft economic analysis and reopening the public comment period for 30 days.

We utilized the economic analysis, and took into consideration comments and information submitted during the public hearing and comment period, to make this final critical habitat designation. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Comment 1d: The Service cannot designate critical habitat until it first complies with National Environmental Policy Act requirements.

Our Response: An environmental assessment and/or an environmental impact statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice in the **Federal Register** outlining our reasons for this determination on October 25, 1983 (48 FR 49244). This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Comment 1e: The proposed rule is based on unpublished data that has not been made available to the public for review. The commenter asserts that the Service has proposed a regulatory action on the basis of secret data that has never been made available for public comment.

Our Response: The commenters use ''Lafferty, *et al.* (in prep.)'' and ''Jacobs (*in litt.* 1998)'' as examples of unpublished data not available to the public for review. However, we made both references available to the public, as indicated in the ''References Cited'' section of the proposed rule. They were also part of the administrative record for the proposed rule. Additionally, the two citations referred to as ''Lafferty, *et al.* (in prep.)'' were published in 1999 (Lafferty *et al.* 1999a and 1999b) and were available as peer-reviewed literature during the second comment period on the proposed rule. The material cited in ''Jacobs (*in litt.* 1998)'' is now in an unpublished manuscript that has been submitted for publication and is cited in this final rule as ''Dawson *et al.* 2000.''

Comment 1f: One commenter stated that it was inappropriate for us to fail to designate critical habitat for the populations north of Orange County solely on the basis of the proposed rule to delist those populations. In particular, the commenter claims that doing so would be in violation of the April 5, 1999, order requiring the Service to propose designation of critical habitat for the species.

Our Response: The comment is based on the erroneous understanding that we artificially limited the proposed, and now final, rules to designate critical habitat for the tidewater goby because of the existence of a proposed rule to delist the tidewater goby in a portion of its range. In fact, the proposed and final critical habitat designation and the proposed delisting rule is irrelevant to the question of what areas should be designated as critical habitat for the tidewater goby. What is relevant is that our analysis of the best available information indicates that the areas north of Orange County do not constitute critical habitat as defined by the Act. This is discussed in greater detail in the section above titled, ''*Criteria Used To Identify Critical Habitat.*'' Although this same information is also the basis for the proposed delisting, that action and this one are separate and independent administrative actions. Finally, the Court on November 19, 1999, dismissed a motion to enforce judgement based on the same grounds that the commenter raised.

Issue 2: Biological Concerns

The following comments and responses involve issues related to the biological basis for the designation.

Comment 2a: The use of the 50-year flood plain to define the lateral extent, or width of the critical habitat units, is unrealistic. The 50-year flood plain has not been delineated in most of the areas containing critical habitat units.

Our Response: We agree that the use of the 50-year flood plain is not easily defined in certain areas where the 50-year flood plain is not delineated or is in dispute. In those cases, we have changed the lateral extent of critical

habitat designation to be the presence of alluvial soils (soils deposited by streams), obligate and facultative riparian vegetation (requiring and usually occurring in wetlands respectively), abandoned river channels, or known high water marks. These features characterize the lateral extent of critical habitat within rivers, streams, and their associated estuaries where the 50-year flood zone has not been identified. Existing man-made features and structures within this area, such as buildings, roads, railroads, and other features, do not contain, and do not have the potential to develop the primary constituent elements for the tidewater goby.

Comment 2b: Tidewater gobies are not documented to occur in upstream portions of rivers and streams in Orange and San Diego Counties. There is no evidence that the upstream areas proposed meet the Service's definition of critical habitat for the tidewater goby.

Our Response: Tidewater gobies often migrate upstream into tributaries up to 2.0 km (1.2 mi) from estuaries. In San Antonio Creek and the Santa Ynez River in Santa Barbara County, tidewater gobies are often collected 5–8 km (3–5 mi) upstream of the tidal or lagoonal areas, sometimes in beaver-impounded sections of streams (Swift *et al.* 1989). The fish move upstream in summer and fall as sub-adults and adults. There is little evidence of reproduction in these upper areas (Swift *et al.* 1997).

Tidewater gobies were collected in Trabuco Creek, Orange County, in 1939, approximately 4.5 km (2.8 mi) from the ocean (mouth of San Juan Creek) (UMMZ collection number 133000). In San Diego County, tidewater gobies were collected from the Santa Margarita River approximately 3.5 km (2.2 mi) from the mouth of the River in 1991. Presumably, they may have occurred further upstream if not for a beaver dam, which at that time acted as an effective barrier to fish movement (Holland 1992). This speculation turned out to be an accurate prediction when in May 2000, several years after the beaver dams were removed by high flood flows, gobies were collected approximately 4.5 km (2.8 mi) upstream of the mouth of the Santa Margarita River in the vicinity of the power line crossing (D. Holland, pers. comm. 2000). Clearly, tidewater gobies can occupy upstream portions of creeks in San Diego and Orange counties.

Little is known about why tidewater gobies utilize these upstream areas. Swenson (1995) found that tidewater gobies in marsh habitats in these upstream areas were larger and had fewer parasites than gobies in nearby creek and lagoon habitats. However, Swenson (1995) also found that gobies of all life stages occurred in lagoon, marsh, and creek habitats, indicating that they can complete their life cycle in any of the three habitat types. Because all life history stages of the species can be found here these areas are important to the species and we are including upstream areas as part of the critical habitat units in this designation.

Comment 2c: One commenter claimed that the proposed rule has overstated the potential impacts of the Foothill Transportation Corridor South to tidewater gobies. In contrast, another commenter expressed concern about the significant and enduring impacts to upland and riparian species, including tidewater gobies, from the proposed preferred alignment of the Foothill Transportation Corridor South.

Our Response: The proposed ''CP alignment'' of the Foothill Transportation Corridor South (FTCS), if constructed, may have substantial negative impacts to the tidewater goby, specifically in San Mateo and San Onofre Creeks (Michael Brandman and Associates 1997). The lagoons at the mouth of San Mateo Creek and San Onofre Creek are both now occupied by tidewater gobies, and these two lagoons typically support large goby populations from several thousand to approximately 70,000 gobies (Swift and Holland 1998). These two populations, along with Las Flores Creek, are the largest and most persistent in the region and are thought to serve as source populations for dispersal into the ephemeral estuaries and streams in the area. Thus these populations are important to the recovery of the tidewater goby.

The FTCS CP alignment would have both significant short-term and long-term impacts to tidewater gobies in the San Mateo Creek and San Onofre Creek drainage basins (Michael Brandman and Associates 1998). Short-term impacts would include mortality and temporary loss of habitat for breeding, feeding, and sheltering due to blockage or diversion of water flow, increased siltation from the required cut and fill of thousands of tons of earth, and the disturbance of low oxygen sediments. Long-term impacts would include: the permanent alteration of the hydrologic regime, primarily in changes to flow regimes, temperature patterns, and sediment movement characteristics of the streams; permanent loss of habitat for breeding, feeding, and sheltering due to siltation; and permanent deterioration in water quality of the streams from the continuous input of heavy metals and other contaminants. These types of changes to the abiotic elements of a stream are often associated with corresponding changes to the ichthyofauna (fish species assemblage within a region). Generally, this kind of disturbance results in an increase of exotic fish species to the detriment of the indigenous (native) ichthyofauna (Moyle and Light 1996). A preliminary investigation of the impacts to tidewater gobies from the CP alignment found that these impacts would be less than significant after mitigation (Michael Brandman and Associates 1998). However, we believe that the benefits of the proposed mitigation would be minimal and that construction of the CP alignment would likely result in the loss of these populations and potentially preclude recovery for this species.

Issue 3: Economic Analysis

There were numerous comments that addressed economic issues.

Comment 3a: The Service should recognize the importance of the coastal railway corridor and that any critical habitat designation is not intended to impede rail service or the maintenance or improvement of rail facilities in the coastal railway corridor.

Our Response: The coastal railway crosses all tidewater goby critical habitat units. Any activities permitted, funded, or carried out by a Federal agency that jeopardize the species or destroy or adversely modify its critical habitat will require a section 7 consultation with the Service. Any non-federal activity resulting in take of tidewater gobies, as defined by the Act, will require a section 10(a)(1) permit issued by the Service. We will work closely with the responsible agencies within the coastal railway corridor to avoid and minimize impacts to tidewater goby populations and critical habitat from future maintenance or improvements to the coastal railway. Consultations will now need to consider critical habitat.

Comment 3b: Designation of critical habitat will cause private property values to decline and will negatively affect businesses.

Our Response: The economic analysis indicates that designation of critical habitat for the tidewater goby will not have a significant economic impact. The economic analysis does acknowledge that the designation of critical habitat may affect private property values. We believe that this short-term effect would occur from market uncertainty and public perception of the perceived impacts of the critical habitat designation on property values. We also believe that this short-term effect on property values would diminish over time. We did not find supporting

evidence during the preparation of the economic analysis to estimate or document this potential short-term effect on property values. The economic analysis determined that there will be an insignificant impact to businesses.

Comment 3c: The Service must consider the economic impacts of critical habitat designation on the Encina Power Station located at the mouth of Agua Hedionda Lagoon. The power plant is a must-run facility that provides 25 percent of all power used in San Diego County. The operators of the facility have raised concerns that the designation of critical habitat would result in ecological modifications to the marine environment in order to return the lagoon to the brackish coastal environment preferred by the goby. According to the operators, returning the lagoon to its former condition would threaten the power station's ability to maintain use of its cooling system, which currently relies on water temperature and flow more characteristic of a tidal environment.

Our Response: We believe that the existing characteristics of Agua Hedionda as fully tidal lagoon would not be altered by designation of critical habitat for the goby. As such, designation of critical habitat for Agua Hedionda is not expected to impact the ability of the power station to continue functioning. The Encina Power Station, however, currently operates under numerous Federal permits, including permits relating to air emissions, water discharge, dredging, and oil spill response. The main impact is that critical habitat will need to be considered in consultations on renewals of existing Federal permits or to obtain new permits.

Comment 3d: One commenter voiced concern that the draft economic analysis failed to consider impacts from critical habitat designation in unoccupied units.

Our Response: The draft economic analysis addressed current and future activities in unoccupied units. We have withdrawn the proposed designation of critical habitat for Buena Vista Lagoon (see explanation under response to comment 4b3, below). In most cases, there was no evidence that the proposed activity would involve a Federal nexus. In the absence of a Federal nexus, critical habitat designation would have no impact on the proposed activity. In a few cases, however, a Federal nexus associated with a proposed activity was identified. In such cases, the draft economic analysis addresses the potential delays and administrative costs attributable to new Section 7 consultations. Discussion of these costs can be found on pages 19, 20, 21, 22, and 24 of the report.

Comment 3e: One commenter indicated that the draft economic analysis is flawed because it does not account for the fact that the proposed critical habitat includes ''waters of the United States.''

Our Response: The draft economic analysis considered the regulatory program of the U.S. Army Corps of Engineers to authorize the discharge of dredged and fill material into ''waters of United States'' under the section 404 of the Clean Water Act (see Exhibit ES–1, Summary of Impacts of Under the Proposed Designation of Critical Habitat for the Tidewater Goby in the final economic analysis available from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section)).

Comment 3f: Two commenters indicated that the incremental approach used in the draft economic analysis is improper and fails to comply with the requirements set forth in the Act.

Our Response: We do not agree that the economic impacts of the listing should be considered in the economic analysis for the designation of critical habitat. The Act requires that listing decisions be based solely on the best available scientific and commercial data available (section 4(b) of the Act). Congress also made it clear in the Conference Report accompanying the 1982 amendments to the Act that ''economic considerations have no relevance to determinations regarding the status of species * * *.'' We use the economic analysis to make decisions on excluding areas from critical habitat under section 4(b)(2) of the Act. The section 4(b)(2) exclusion process does not include an economic analysis related to the listing of a species. Our economic analysis evaluates the incremental effect of critical habitat on current or planned activities and practices and does not address effects associated with the listing of the species.

Comment 3g: One commenter stated that the draft economic analysis failed to account for the current housing shortage in California.

Our Response: The final critical habitat designation for the goby includes ten coastal tributaries in Orange and San Diego Counties. As the units are limited to bodies of water and its associated flood plain, the designation of critical habitat for the goby would not reduce the amount of developable land or exacerbate the current housing shortage in the affected counties.

Comment 3h: One commenter indicated that the draft economic analysis failed to address the cumulative impact of multiple critical habitat designations.

Our Response: Under the requirements set forth by the Act, the Service is required to estimate the potential impacts attributable to the proposed government action, in this case the designation of critical habitat for the goby. The Service is not required to evaluate the potential cumulative impacts associated with the listing or critical habitat for multiple species. However, the draft economic analysis of critical habitat for the goby considers the incremental impacts of designating critical habitat in the context of existing baseline regulations. As such, the analysis considers the economic effects of critical habitat designation for the goby in the context of other Federal, state, or local regulations, as well as additional species protected by the Act.

Comment 3i: One commenter stated that the draft economic analysis failed to address the economic impacts associated with modifying Agua Hedionda Lagoon.

Our Response: The designation of critical habitat for the goby will not result in modifications to the current ecological conditions at Agua Hedionda Lagoon. Recent research (Merkle and Associates 1999) indicates that the current ecological conditions at Agua Hedionda are suitable for the goby. As a result, no modifications to the lagoon will occur as a result of designation of critical habitat, and no economic impacts associated with modifications to Agua Hedionda are expected.

Comment 3j: One commenter stated the draft economic analysis failed to assess the economic impacts on private persons and state entities that lack a Federal nexus.

Our Response: The primary effect of a critical habitat designation is regulatory and occurs under section 7 consultation of the Act, when Federal agencies must consult with the Service whenever activities they fund, authorize, or carry out may affected listed species or designated critical habitat. Activities on land owned by individuals, organizations, states, local, and Tribal governments only require consultation with the Service if their actions occur on Federal lands; require a Federal permit, license, or other authorization; or involve Federal funding. If there is no Federal nexus, we do not anticipate that the designation will have a significant economic impact on private persons and state entities. The economic analysis does acknowledge that the designation of critical habitat has the potential to affect

private property values (see response to comment 3b).

Comment 3k: One commenter expressed concern that public comments submitted by the North San Diego County Transportation Board (NCTD) on the proposal to designate critical habitat for the goby were not included in the draft economic analysis.

Our Response: Public comments submitted by the North San Diego County Transportation Board (NCTD) in July 2000, were incorporated into the final economic analysis of critical habitat designation for the goby.

Comment 3l: One commenter expressed concern that the draft economic analysis did not address current water quality maintenance activities in Aliso Creek conducted by the County of Orange.

Our Response: A discussion of current and future water quality maintenance activities in Aliso Creek, based on public comments submitted in July 2000, was incorporated into the final economic analysis of critical habitat designation for the goby.

Issue 4: Site Specific Issues

The following comments and responses involve issues related to the inclusion or exclusion of specific areas, or our methods for selecting appropriate areas for designation as critical habitat. We received comments challenging our proposed determination of critical habitat for all the proposed units.

Comment 4a: Several commenters pointed out errors in mileages, locations, or descriptions in the proposed rule.

Our Response: Corrections have been made in the final rule to reflect these comments, where appropriate.

Issue 4b: We received comments for all 11 units proposed for designation asserting that the specified unit(s) was unsuitable for designation, or they recommended the specific unit(s) be excluded from designation.

Our Response: We carefully considered the information provided in the comments regarding requested exclusions and removals. The following is an overview of our rationale for areas retained as well as the rationale for specific units (responses 4b1 through 4b5).

Comment 4b1: Aliso Creek cannot currently support tidewater gobies, and restoration of the lagoon for the species is unrealistic at this time.

Our Response: Many of the ecological characteristics of Aliso Creek lagoon have not changed noticeably since gobies occupied the creek in the late 1970's (Camm Swift, ichthyologist consultant, pers. comm. 2000). The predominant substrate is sand. Small patches of aquatic vegetation typical of a coastal marsh (*Typha*, *Scirpus*, *Salicornia*, and *Distichlis*) grow around the margin of the lagoon. The system still forms a brackish water lagoon in the spring, which is usually opened to the ocean later in the year by winter flows. The water quality of the lagoon in the 1970's was such that warning signs were posted to keep beach visitors out of the lagoon's waters. This, too, has not changed. Although the watershed has become more urbanized over the past 2 decades, there has not been a noticeable change in the lagoon since it was formerly occupied by the species.

Currently, the local agency stakeholders are working with the U.S. Army Corps of Engineers to develop an Aliso Creek Watershed Management Plan with the central goal of restoring the watershed. We believe that because the lagoon has not changed noticeably since the 1970's, and because there is now a concerted effort by the community to restore the watershed upon which the lagoon depends, Aliso Creek represents one of the most promising prospects for reestablishing a goby population. As such, Aliso Creek and its lagoon are essential to the conservation of the species and are therefore designated as critical habitat.

Comment 4b2: The Service should not designate any areas on Camp Pendleton because populations on the base have remained relatively stable, and all threats to tidewater goby populations are addressed by the existing biological opinions, management programs, and within the ongoing NEPA-compliance program of the base.

Our Response: Currently, tidewater gobies occupy eight locations on Camp Pendleton. These include, from north to south, San Mateo Creek, San Onofre Creek, Las Flores Creek, Hidden Creek, Aliso Creek, French Creek, Cockleburr Creek, and the Santa Margarita River. All eight localities are relatively pristine coastal wetlands and are all crossed or just downstream of Interstate 5 and the coastal railway.

Although currently there are eight locations on Camp Pendleton occupied by the species, this situation is rare and has not previously been recorded. As recently as 1991 the number of occupied goby localities was only three (Swift and Holland 1998, Dan Holland *in litt.* 1999). Of the eight currently occupied areas, only one of these, Las Flores Creek, has remained continuously occupied since 1987. San Mateo Creek and San Onofre Creek have both been extirpated in recent years as a result of human-caused habitat alteration. Hidden Creek appears to be perennial but may become so hypersaline in a severe drought as to be unsuitable for any fish species (Swift and Holland 1998). Aliso Creek, French Creek, and Cockleburr Creek are all relatively ephemeral and have not supported gobies in times of drought. The Santa Margarita River seemed to be a large stable population until 1991, but gobies disappeared in 1991, shortly after the exotic yellowfin goby (*Acanthogobius flavimanus*) became abundant in the estuary.

In the proposed rule, we stated that all eight historic and currently occupied tidewater goby locations in southern California contained the primary constituent elements necessary to support gobies. This has been substantiated by the fact that all eight locations are now occupied. We believe that these localities represent the center of the metapopulation in Orange and San Diego Counties and will be the keystone for recovery of the species. As such, these areas are essential to the conservation of the species.

Pursuant to the definition of critical habitat, an area must also require ''special management considerations or protections.'' This is a term that originates in the definition of critical habitat in section 3 of the Act. Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and manages for the long-term conservation of the species. The Service considers a plan adequate when it meets all of the following three criteria: (1) The plan provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the management plan will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and (3) the plan provides assurances the conservation plan will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act.

In 1995, the Service issued a programmatic biological opinion on the ''Programmatic Activities and Conservation Plans in Riparian and Estuarine/Beach Ecosystems on Marine

Corps Base, Camp Pendleton,'' including an Estuarine/Beach Ecosystems Conservation Plan (Biological Opinion 1–6–95–F 02, 1995). The reasonable and prudent measures of the biological opinion require the Marines to adopt and implement the Estuarine/Beach Ecosystem Conservation Plan.

The Estuarine/Beach Ecosystem Conservation Plan is structured to minimize the effects to listed species resulting from programmatic impacts associated with ongoing and future training, maintenance, recreation, and construction activities. Because the terms and conditions are mandatory, there are assurances that Conservation Plan will be implemented, and the Marines have the authority to carry out the measures in the plan. Therefore, our second special management criterion is also met. However, because the conservation plan outlines broad goals for benefiting tidewater gobies without clearly identifying specific conservation efforts, its effectiveness is not assured. The Estuarine/Beach Ecosystem Conservation Plan does not contain specific biological objectives for the tidewater goby. The Conservation Plan focuses primarily on avian species. It does not identify specific measures or targets to achieve an increase in the tidewater goby population size. Also, because the plan is general in nature, it does not outline parameters that can be used to measure achievement of objectives or standards by which to measure them. Population surveys and monitoring requirements are identified in the Conservation Plan, but have not been met as defined in the plan. The Service is unable to determine that the Estuarine/Beach Ecosystem Conservation Plan will be effective, and consequently, it is not adequate to preclude the need to designate critical habitat.

Comment 4b3: Buena Vista lagoon is currently unsuitable for supporting a population of tidewater gobies. The designation of Buena Vista Lagoon as critical habitat for the tidewater goby is premature at best and could actually preclude the modifications needed to create such habitat.

Our Response: Buena Vista Lagoon, a California Department of Fish and Game Ecological Reserve, is currently predominated by freshwater marsh conditions, and is closed to the Pacific Ocean by a concrete weir. This configuration, as well as the Pacific Coast Highway, the coastal railway, and Interstate 5 bridges, which are all predominantly dirt fill structures, constrict the lagoon such that sediment can no longer be moved through the system. The lagoon has been gradually filling with sediment and, without modifications to the system, the lagoon will conceivably fill entirely, transforming the lagoon into a mud flat. This situation has become apparent to the California Department of Fish and Game (CDFG), the Buena Vista Lagoon Foundation, and residents of the local communities in Carlsbad and Oceanside (Tim Dillingham CDFG pers. comm. 1999, Ron Wooton, Buena Vista Lagoon Foundation, pers. comm 1999).

In its current configuration, Buena Vista Lagoon is essentially a freshwater lake with a fish fauna that consists entirely of non-native freshwater fishes. Some of these, such as largemouth bass (*Lepomis macrochirus*), have been implicated in the decline of tidewater gobies (Swift *et al.* 1997). However, if the lagoon were once again open to the Pacific Ocean, the habitat could support tidewater gobies. Opening the lagoon to tidal flushing would also provide an outlet to move sediment through the system, which would prevent the lagoon from becoming a mud flat, and provide some sediment to the ocean to help build local beaches. We believe that simply removing the weir structure at the mouth of the lagoon and replacing it with a structure that would permit tidal flow would be enough to restore some goby habitat to the lagoon.

The Buena Vista Lagoon Foundation is a non-profit private corporation dedicated to the protection and maintenance of Buena Vista Lagoon. The Foundation has a memorandum of understanding with the CDFG authorizing it to prepare an Ecological Reserve Land Management Plan (ERLMP) on behalf of the department. Among the proposals being considered is the potential for establishing a tidal flushing system which would open the lagoon to the Pacific Ocean. We feel that Buena Vista Lagoon could provide essential habitat for the tidewater goby and that the current direction of the ERLMP toward a more tidal system at Buena Vista Lagoon will accommodate the creation of tidewater goby habitat. However, while we believe Buena Vista Lagoon could be restored to provide tidewater goby habitat, we do not have information demonstrating such restoration is essential to the conservation of the species. Therefore, we are removing it from the designation.

Comment 4b4: Agua Hedionda Lagoon is unsuitable for tidewater gobies and so should not be designated as critical habitat.

Our Response: We received a number of comments questioning the feasability of Agua Hedionda Lagoon to support tidewater gobies. These commenters claimed that the habitat in Agua Hedionda Lagoon had been so altered since 1940, the last year in which gobies were collected from the lagoon, that the lagoon could not only not support tidewater gobies, but that the possibility of restoration of the lagoon for the species was not feasible. Many of these comments were grounded in the misconception that the lagoon would have to be restored to pre-1940 conditions to support the species. These commenters were concerned that critical habitat would trigger widespread lagoon alterations to restore habitat and thereby eliminate the many and varied uses of this tidal lagoon. Also, the commenters were concerned that alterations necessary to make suitable habitat for gobies would reduce the habitat suitability for other sensitive species that currently occupy the lagoon. We believe areas within the lagoon could support gobies now, without any restoration effort, and without any extensive changes to the current configuration or uses of the lagoon. We address habitat suitability within the lagoon here, and will deal with the effects of the designation on Agua Hedionda Lagoon and the various uses within it in the succeeding comment.

The comments we received generally cited four habitat elements within the lagoon as being unsuitable for gobies: water quality, salinity, sediment, and the presence of predatory species. The most recent survey effort of fishes and sediments was conducted by Merkel and Associates (1999) on September 23, 1999. The water quality, salinity, sediment, and fish species composition results of this survey indicated to us that not only are there areas within the lagoon that could support the tidewater goby, but that the lagoon will probably not require any restoration to do so (Merkel and Associates 1999).

Merkel and Associates (1999) reported that salinity measurements of the areas of the eastern lagoon ranged from 5 to 48 ppt with an average of about 26.5 ppt. The tidewater goby is often found in waters of relatively low salinities (around 10 ppt) in the uppermost brackish zone of larger estuaries and coastal lagoons, but can tolerate a wide range of salinities, and has been collected at salinities as high as 42 ppt (Swift *et al.* 1989, 1997; Worcester 1992, Worcester and Lea 1996; Swenson 1995). A recent survey of French Creek Lagoon in June of 2000 found thousands of tidewater gobies of all life stages. Salinity in French Creek Lagoon during this survey ranged from 45–51 ppt and temperatures ranged from 31–32 °C (Service field data 2000). Merkel and

Associates (1999) also reported that water temperatures within the lagoon were 21–22 °C and depth ranged from 0.1 to 1.0 m. Tidewater gobies are usually collected in water less than 1 m (3 ft) deep, and in temperatures typically between 9–25 °C (Swift *et. al.* 1989; Wang 1982; Irvin and Soltz 1984; Worcester 1992; Swenson 1995). Thus, depth and temperature are also within the range usually occupied by gobies. Given what we know of the water quality tolerances and preferences of this species for salinity, temperature, and depth, the conditions in the eastern end of Agua Hedionda Lagoon appear suitable to support gobies.

Merkel and Associates (1999) found that sediments in the east end of Agua Hedionda Lagoon ranged from fine sand to silt/clay. Although there are no comprehensive studies comparing the sediment composition of tidewater goby habitats in different localities, there appears to be preference of gobies for coarser sand substrates, especially for breeding (Swift *et al.* 1989, Worcester 1992, Swenson 1995). However, muddy, marshy conditions are a typical feature in tidewater goby habitats, and have been shown to be occupied by gobies in San Antonio Creek, the Santa Ynez River, Aliso Creek (Orange County), San Mateo Creek, San Onofre Creek, Las Flores Creek, French Creek, Aliso Creek (San Diego County) and the Santa Margarita River (Swift *et al.* 1989, Holland 1992, Swift *et. al.* 1994, Swift *et al.* 1997, Swift and Holland 1998, Service field data 2000). Swenson (1995) found that in San Gregorio and Pescadero Creek, tidewater gobies inhabited a variety of habitats, including (1) sandy lagoons, (2) mud or gravel-bottomed reaches of creeks, and (3) muddy marsh pools. Swenson (1995) also found that tidewater gobies of all life stages were collected in all three of these habitat types, suggesting that tidewater gobies can complete their life cycle in any one of the three. Worcester (1992) found that although tidewater gobies were significantly associated with coarse sand and fine gravel substrates, their distribution was significantly associated with a number of other physical habitat parameters, so it was unclear how important substrate was in determining their presence. Page (Carl Page pers. com. 2000) has found that tidewater gobies are actually most strongly associated with food abundance in Lake Earl, Del Norte County, and showed little preference for substrate. Furthermore, Page found that tidewater gobies commonly utilized silt dominated muddy habitats, built breeding burrows and spawned in these muddy habitats, and that their post planktonic larvae utilized muddy silt dominated habitats exclusively, presumably due to food availability. Based on this information, we conclude that substrates in Agua Hedionda Lagoon would not preclude the occurrence of tidewater gobies, and that they could occupy these areas.

Merkel and Associates (1999) found that the shoreline was steep sided at the east end of Agua Hedionda Lagoon, and stated this feature may make the lagoon unsuitable for tidewater gobies. In fact, tidewater gobies occupy a number of lagoon and estuarine habitats that are more steeply sided than Agua Hedionda Lagoon. An example of such a lagoon is Hidden Creek, San Diego County. This lagoon consists of what can only be described as a slot canyon with vertical walls extending from the bottom of the lagoon to as much as 10 m above the water's surface. Other occupied lagoons at Aliso Creek (San Diego County), Cockleburr Creek, Shuman Lagoon, and the Santa Ynez River all have steep sides as a prominent habitat feature (Swift *et al.* 1997, Swift and Holland 1998). Therefore, the shoreline configuration at Agua Hedionda appears suitable for tidewater gobies.

Another contention of some commenters as to the suitability of Agua Hedionda for tidewater gobies was that occurrence of native and non-native competitors and predators in the lagoon would preclude the possibility of occupation by tidewater gobies. Merkle and Associates (1999) found the following fish species at Agua Hedionda in September 1999: California killifish (*Fundulis parvipinnis*), topsmelt (*Atherinops affinis*), deepbody anchovy (*Anchoa compressa*), arrow goby (*Clevelandia ios*), mosquitofish (*Gambusia affinis*), striped mullet (*Mugil cephalous*), and California butterfly ray (*Gymnura marmorata*). With the exception of the California butterfly ray, these are all species that the tidewater goby currently co-occurs with in other lagoons in San Diego County (Swift and Holland 1998). Fish surveys of the inner lagoon in 1994 and 1995 (Marine Environmental Consultants *in litt.* 1997) found 23 species, all native, and most, species that the tidewater goby co-occurs with, with the exception of the yellowfin goby (*Acanthogobius flavimanus*). Yellow fin gobies are a non-native species thought to compete and predate on tidewater gobies (Wang 1984, Swift and Holland 1998). Yellowfin gobies were not present in the most recent survey (Merkel and Associates 1999). We conclude that the fish fauna of Agua Hedionda Lagoon is suitable for tidewater gobies, and, in fact, is representative of faunas gobies co-occur with in other coastal lagoons.

Jenkins and Wasyl (1999) analyzed tidewater goby migration based on the coastal currents in the vicinity of Agua Hedionda Lagoon. The authors were addressing the effects of existing offshore current patterns on the success of tidewater goby dispersal to adjacent lagoon habitats. The authors found that 55–60 percent of nearshore currents at Agua Hedionda had a net southward transport, and 40–45 percent of nearshore currents had a net northward transport. The authors also estimated that the probability that northward nearshore currents would transport gobies to Buena Vista Lagoon to the north was about 0.4 percent. They did not estimate the probability of gobies being transported to Batiquitos Lagoon to the south. While this report examined an interesting line of research, two recently published studies documented the dispersal of tidewater gobies among coastal lagoons (Lafferty *et al.* 1999a, 1999b).

Comment 4b5: We received a number of comments concerning the potential changes or alterations to Agua Hedionda Lagoon resulting from a critical habitat designation. Many of these commenters believed that critical habitat designation would result in widespread changes to the existing configuration of the lagoon and the corresponding affects to current uses of the lagoon.

Our Response: Agua Hedionda Lagoon is dredged to retain tidal influence within the lagoon which provides for a deep tidal bay type of habitat. This configuration also accommodates a number of recreational and other uses, including motorboating, water skiing, and a commercial shellfish farm. Although this differs markedly from the historic conditions within the lagoon, we feel that there are still areas within the lagoon which provide potential habitat for tidewater gobies. We believe that the current configuration of the lagoon could support the species as well as the existing uses within the lagoon.

Comment 5: San Juan Creek and the San Luis Rey River should be included as critical habitat.

Our Response: We received several comments proposing that San Juan Creek and the San Luis Rey River should be designated as critical habitat. Recent investigations at San Juan Creek and the San Luis Rey River have provided some data as to the suitability of these habitats to support tidewater gobies (Michael Brandman and Assoc. 1998, Dan Holland pers. comm. 2000). These data indicate that if efforts were

undertaken to restore tidewater goby habitat to these systems, they may support the species. San Juan Creek and the San Luis Rey River may be important in the species recovery and their potential value will be assessed in the recovery plan for the species. However, while San Juan Creek and the San Luis Rey River may be restored to provide suitable habitat for tidewater gobies, we do not have information demonstrating these areas are essential to the conservation of the species; therefore, these areas do not meet the definition of critical habitat.

Summary of Changes From the Proposed Rule

We changed the rule to better define the lateral extent of critical habitat in response to a comment that the 50-year flood plain is undelineated or in dispute in many areas and is not useful in defining the lateral extent of critical habitat for the goby. In this final rule we have defined the lateral extent of critical habitat as the 50-year flood plain or the stream channels, estuaries, and other areas within these reaches potentially inundated by high flow events. The lateral extent of high flow events, and critical habitat, can be determined by the presence of alluvial soils (soils deposited by streams), obligate and facultative riparian vegetation (requiring and usually occurring in wetlands respectively), abandoned river channels, or known high water marks. This constitutes the present aquatic and riparian zones of the rivers, streams, and their associated estuaries designated as critical habitat. Existing human-constructed features and structures within this area, such as buildings, roads, railroads, and other features, do not contain, and do not have the potential to develop, those habitat components. It should be noted that this change does not increase the amount of critical habitat designated, but rather is a less ambiguous method of defining the same critical habitat boundaries.

We have also excluded Buena Vista Lagoon. We note that tidewater goby habitat could be created at Buena Vista Lagoon. Restoring tidal flow by removing the existing weir structure currently blocking the mouth of the lagoon would probably create some habitat for the species (see comment 4b3 in the ''Summary of Comments and Recommendations'' section above). However, as we do not have information demonstrating that restoration of Buena Vista Lagoon is essential for the conservation of the tidewater goby, we have not included the area in this final designation.

Additionally, we have changed the maps to better reflect the lateral extent of areas within these stream reaches that constitute critical habitat. The maps are a graphical representation only and do not constitute the definition of the critical habitat units. The maps are provided for reference purposes only, to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat unit (50 CFR 17.94(b)).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We completed a draft economic analysis and made it available to the public for comment (65 FR 39850). We also completed a final economic analysis that incorporated public comment, information gathered since the draft analysis, and changes to the critical habitat designation. The analysis found that there would be an economic impact from the designation that would vary on a situational level, and that most of the impact would come in the form of new section 7 consultations in unoccupied habitat units. We have determined that these economic impacts are minimal and do not warrant excluding any areas from the designation. The final economic analysis is available to the public at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The tidewater goby was listed as an endangered species in 1994.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 1 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of areas within the geographic range occupied by the tidewater goby does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas outside the geographic range occupied by the species may have incremental impacts on what activities may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. However, our analysis did not identify any significant incremental effects. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat, although they continue to be bound by the provisions of the Act concerning ''take'' of the species.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the tidewater goby since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to have a significant economic impact. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) This rule will not raise novel legal or policy issues. This final determination follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 1.—IMPACTS OF TIDEWATER GOBY LISTING AND CRITICAL HABITAT DESIGNATION

Categories of Activities	Activities Potentially Affected by Species Listing Only [1]	Additional Activities Potentially Affected by Critical Habitat Designation [2]
Federal Activities Potentially Affected [3].	Activities the Federal Government carries out such as: regulation of activities affecting waters of the U.S. (under section 404 of the Clean Water Act); regulation of water flows, damming, diversion, and channelization; road construction, right of way designation; regulation of agricultural activities; some military activities on the Camp Pendleton; hazard mitigation and post-disaster repairs; and construction activities.	Activities by Federal Agencies in any unoccupied critical habitat areas.
Private Activities Potentially Affected [4].	Activities such as: those affecting waters of the U.S. (under section 404 of the Clean Water Act); regulation of water flows, damming, diversion, and channelization; road construction, right of way designation; agricultural activities; hazard mitigation and post-disaster repair; and construction activities that require a Federal action (permit, authorization, or funding).	Funding, authorization, or permitting actions by Federal Agencies in any unoccupied critical habitat areas.

[1] This column represents the activities potentially affected by listing the tidewater goby as an endangered species (March 7, 1994; 59 FR 5494) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above and in this final determination, this designation of critical habitat for the tidewater goby is not expected to have a significant economic impact. We have designated property owned by Federal, State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the U. S. under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Road construction, right of way designation, or regulation of agricultural activities by Federal agencies;

(4) Some military activities on the Camp Pendleton;

(5) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(6) Construction of communication sites licensed by the Federal Communications Commission; and

(7) Activities funded or authorized by Federal agencies.

Some of these activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are largely required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have significant additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this final determination will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This designation will not ''take'' private property and will not alter the value of private property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This designation of critical habitat imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-

range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands that are essential for the conservation of the tidewater goby because they do not support populations or suitable habitat. Therefore, we are not designating critical habitat for the tidewater goby on Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this final rule is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for ''goby, tidewater'' under ''FISHES'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Goby, tidewater	*Eucyclogobius newberryi.*	U.S.A. (CA)	do	E	527	17.95(e)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(e) by adding critical habitat for the tidewater goby (*Eucyclogobius newberrii*) under paragraph (e) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

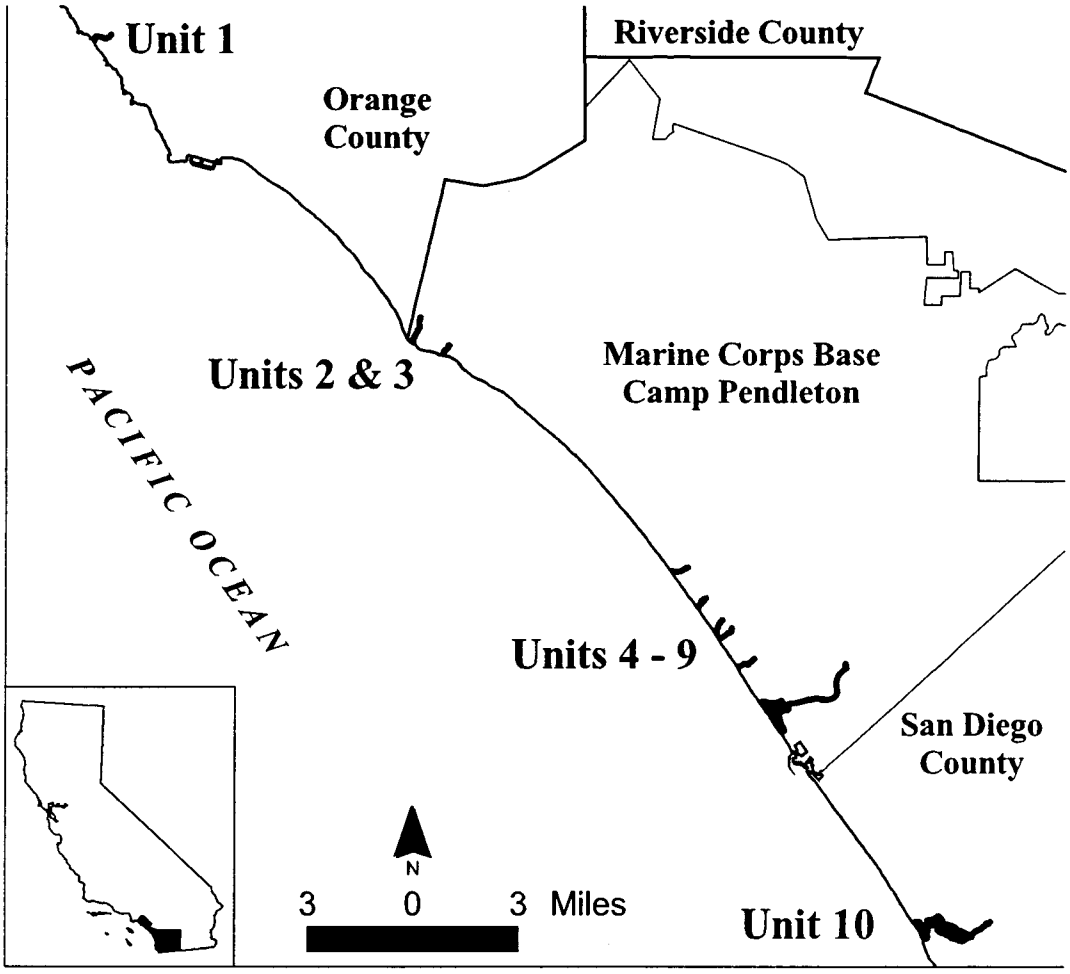
Tidewater goby (Eucyclogobius newberrii)

1. Critical habitat units are depicted for Orange and San Diego Counties, California, on the maps below and as described below.

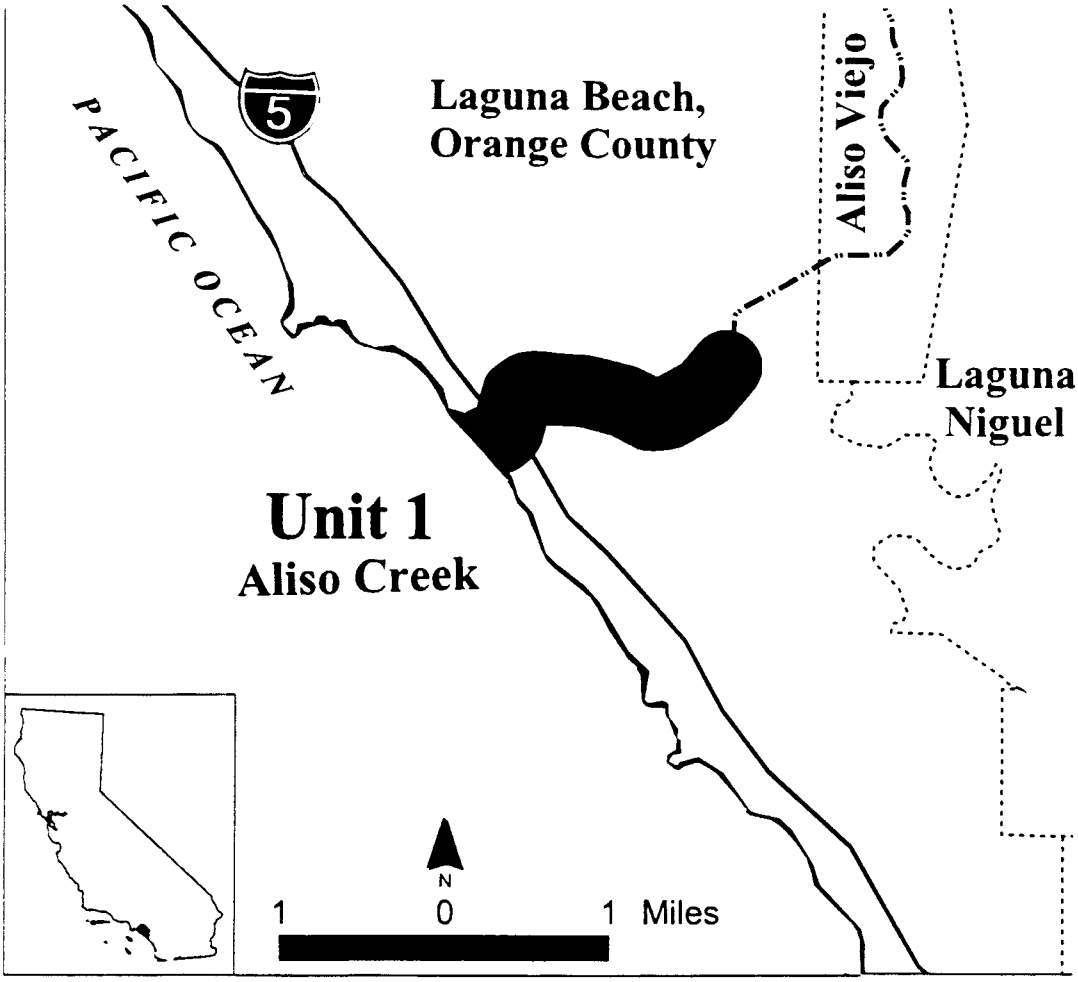
2. Critical habitat includes the sections of streams indicated on the maps below and areas within these reaches potentially inundated by high flow events. Where delineated, this is the 50-year flood plain of the designated waterways. In areas where the 50-year flood plain is not delineated the presence of alluvial soils (soils deposited by streams), obligate and facultative wetland vegetation, abandoned river channels, or evidence of high water marks can be used to determine the extent of the floodplain. Critical habitat does not include existing man-made features and structures within this area, such as buildings, roads, railroads, and other features, which do not contain, and do not have the potential to develop the primary constituent elements for the tidewater goby.

3. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include coastal lagoons and estuary systems supported by a natural hydrological regime, which results in sufficient streamflow, areas of shallow water as well as deep pockets of permanent water, sand and silt substrate, a variety of aquatic and emergent vegetation, and a diversity of prey species; and an environment free from exotic fishes.

BILLING CODE 3420–55–P

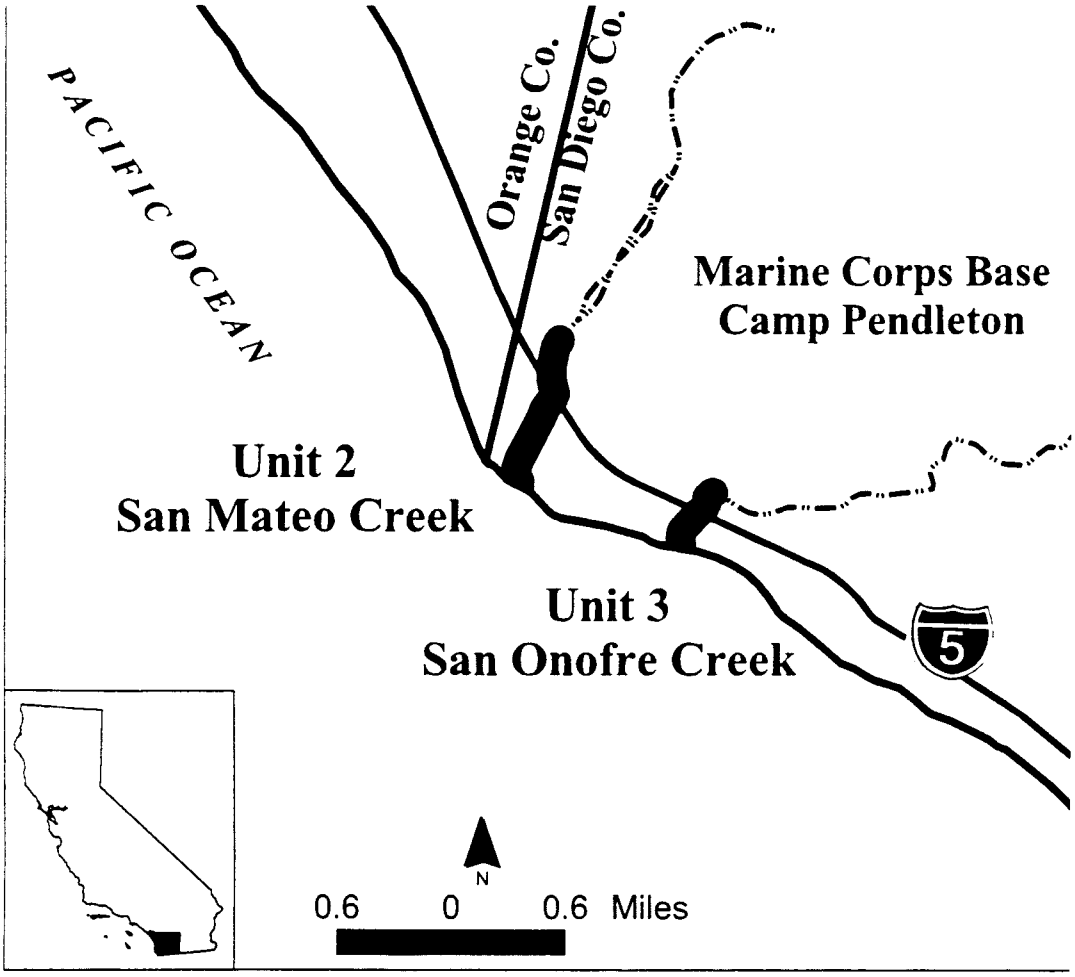


Map Unit 1: Orange County, California. From USGS 7.5′ quadrangle map Laguna Beach, California, and San Juan Capistrano, California. San Bernardino Principal Meridian, California, T. 7 S., R 8 W., beginning at a point on Aliso Creek in SW sec. 32 and at approximately 33°30′46″ N latitude and 117°44′37″ W longitude, UTM coordinates 430853.4 E, 3708395.9 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 1.0 km (0.6 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.


PACIFIC OCEAN
5
Laguna Beach,
Orange County
Aliso Viejo
Laguna
Niguel
Unit 1
Aliso Creek
N
1 0 1 Miles

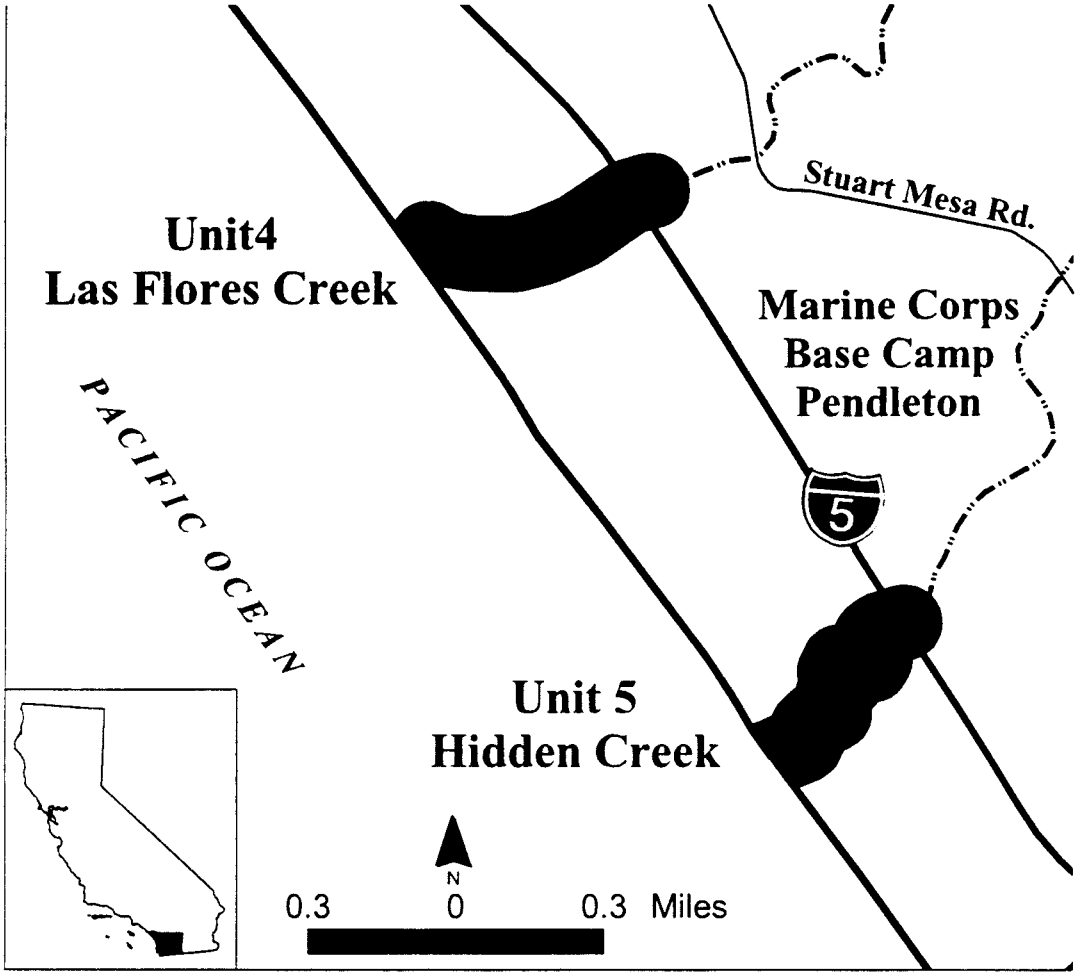
Map Unit 2: San Diego County, California. From USGS 7.5′ quadrangle map San Clemente, California. San Bernardino Principal Meridian, California, T. 9 S., R. 7 W., beginning at a point on San Mateo Creek in NW sec. 14 and at approximately 33°23′46″ N latitude and 117°35′20″ W longitude, UTM coordinates 445152.5 E, 3695369.7 N, and proceeding downstream (southerly) to the Pacific Ocean covering approximately 1.3 km (0.9 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

Map Unit 3: San Diego County, California. From USGS 7.5′ quadrangle map San Clemente, California. San Bernardino Principal Meridian, California, T. 9 S., R. 7 W., beginning at a point on San Onofre Creek in SE sec. 14 and at approximately 33°23′05″ N latitude and 117°34′30″ W longitude, UTM coordinates 446450.2 E, 3694074.4 N, and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.6 km (0.4 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.



Map Unit 4: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 6 W., beginning at a point on Las Flores Creek in the middle of sec. 13 and at approximately 33°17′32″ N latitude and 117°27′20″ W longitude, UTM coordinates 457495.3 E, 3683780.1 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 0.8 km (0.5 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

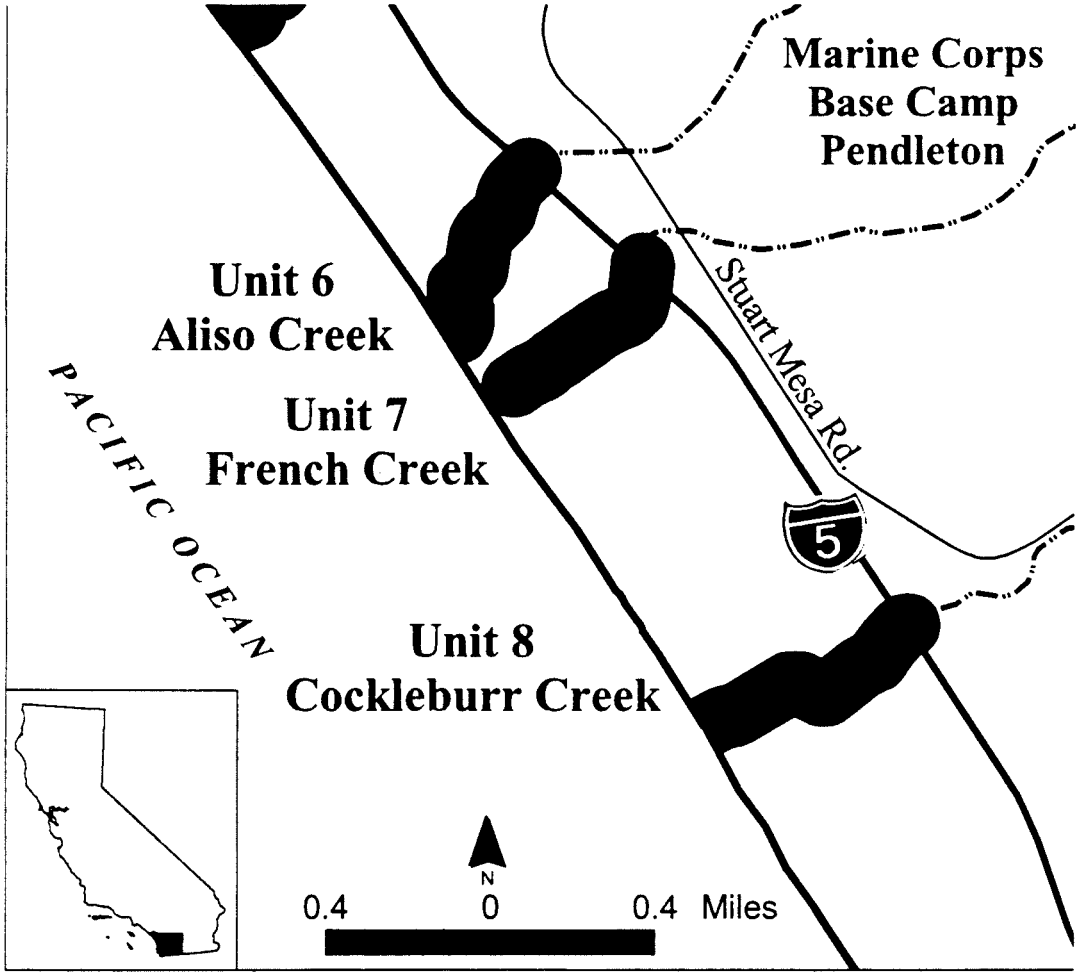
Map Unit 5: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on Hidden Creek in W sec. 30 and at approximately 33°16′46″ N latitude and 117°26′48″ W longitude, UTM coordinates 458321.5 E, 3682362.9 N, and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.8 km (0.5 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.



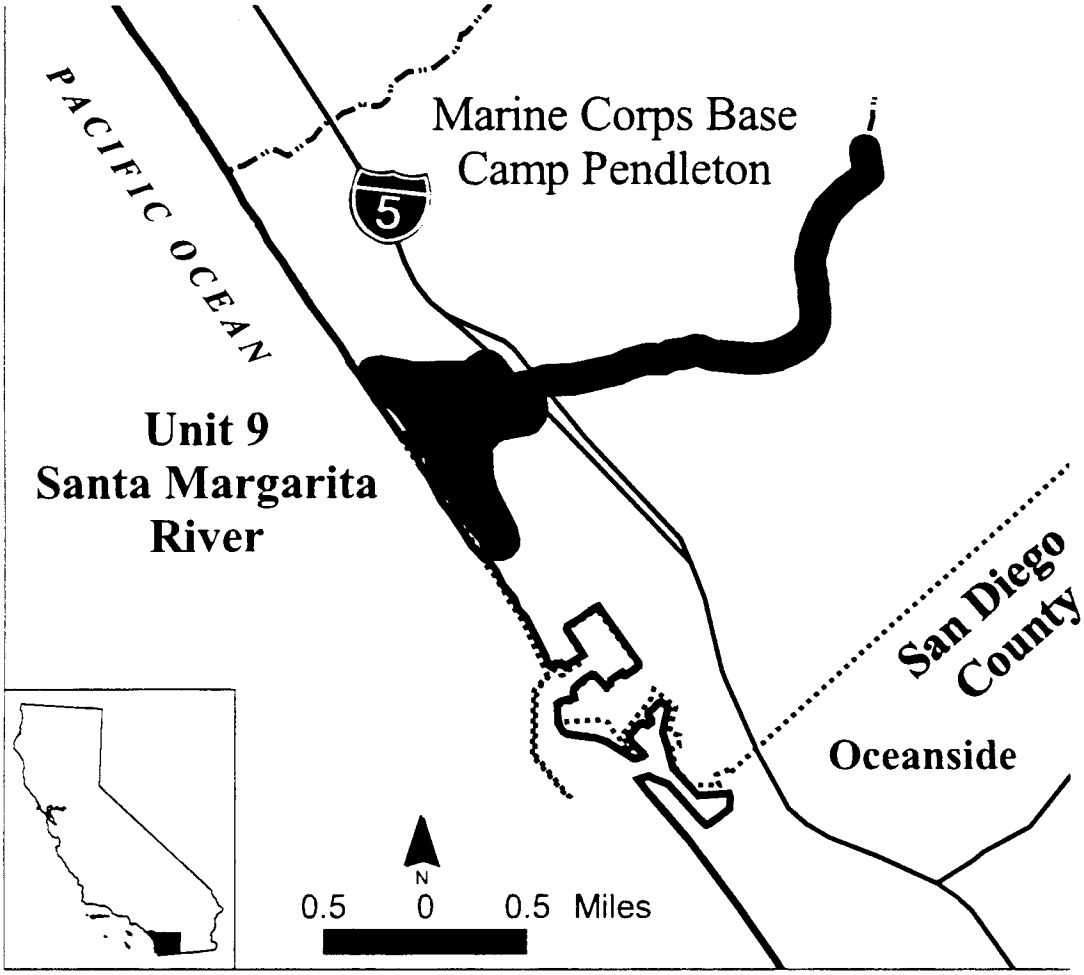
Map Unit 6: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on Aliso Creek in NE sec. 31 and at approximately 33°16′13″ N latitude and 117°26′19″ W longitude, UTM coordinates 459521.7 E, 3680981.1 N, and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.7 km (0.4 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

Map Unit 7: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on French Creek in E sec. 31 and at approximately 33°16′01″ N latitude and 117°26′01″ W longitude, UTM coordinates 459078.8 E, 3681354.4 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 0.7 km (0.4 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.

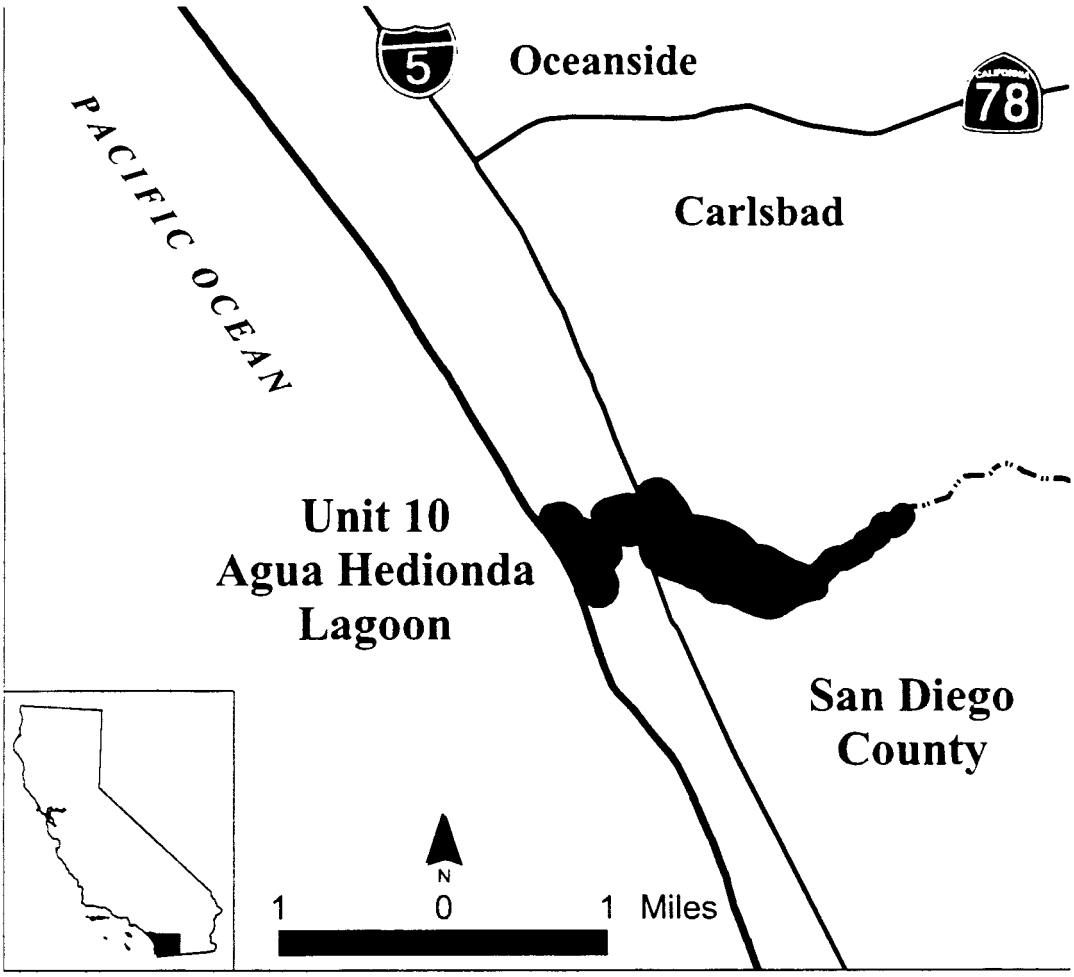
Map Unit 8: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 11 S., R. 5 W., beginning at a point on Cockleburr Creek in NE sec. 5 and at approximately 33°15′16″ N latitude and 117°25′21″ W longitude, UTM coordinates 460570.4 E, and 3679563.4 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 1.0 km (0.6 mi.), including the stream, its 50-year flood plain, and associated lagoons and marsh.



Map Unit 9: San Diego County, California. From USGS 7.5′ quadrangle map Oceanside, California. San Bernardino Principal Meridian, California, T. 11 S., R. 5 W., beginning at a point on the Santa Margarita River in NW sec. 2 and at approximately 33°15′08″ N latitude and 117°22′38″ W longitude, UTM coordinates 464774.9 E, 3679326.9 N, and proceeding downstream (westerly) to the Pacific Ocean covering approximately 5.0 km (3.1 mi.), including the river's 50-year flood plain, associated lagoons and marsh.



Map Unit 10: San Diego County, California. From USGS 7.5′ quadrangle map San Luis Rey, California. San Bernardino Principal Meridian, California, T. 12 S., R. 4 W., beginning at a point on Augua Hedionda Creek in the middle of Section 9 and at approximately 33°08′44″ N latitude and 117°18′19″ W longitude, UTM coordinates 471444.4 E, 3667474.6 N, and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 3.7 km (2.3 mi.), including the creek, its 50-year flood plain, Agua Hedionda Lagoon, and associated marsh.



Dated: November 13, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–29547 Filed 11–17–00; 8:45 am]

BILLING CODE 3420–55–C

Proposed Rules

Federal Register
Vol. 65, No. 224
Monday, November 20, 2000

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. 2000–NM–158–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that currently requires revising the Airplane Flight Manual to include procedures to prevent dry operation of the center wing fuel tank override/jettison pumps and, for certain airplanes, to prohibit operation of the horizontal stabilizer tank transfer pumps in-flight. That AD was prompted by a report indicating that several override/jettison fuel pumps from the center wing tanks and main tanks had been removed because circuit breakers for the override/jettison fuel pumps were tripped, or low pump output pressure was indicated. For certain airplanes, this action would require installation of improved fuel pumps, which would terminate the requirements of the existing AD. This proposal is prompted by new information received from the fuel pump manufacturer. The actions specified by the proposed AD are intended to prevent contact between the rotating paddle wheel and the stationary end plates within the center wing tank override/jettison fuel pumps or horizontal stabilizer tank transfer pumps, which could cause sparks and/or a hot surface condition and consequent ignition of fuel vapor in the center wing tank or horizontal stabilizer tank during dry pump operation (no fuel flowing).

DATES: Comments must be received by January 4, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–158–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–158–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; 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 action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–158–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. 2000–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 15, 1998, the FAA issued AD 98–25–52, amendment 39–10957 (63 FR 71214, December 24, 1998), applicable to all Boeing Model 747 series airplanes, to require revising the Airplane Flight Manual to include procedures to prevent dry operation of the center wing fuel tank override/jettison pumps and, for certain airplanes, to prohibit operation of the horizontal stabilizer tank transfer pumps in-flight. That action was prompted by a report indicating that several override/jettison fuel pumps from the center wing tanks and main tanks had been removed because circuit breakers for the override/jettison fuel pumps were tripped, or low pump output pressure was indicated. The requirements of that AD are intended to prevent contact between the rotating paddle wheel and the stationary end plates within the center wing tank override/jettison fuel pumps or horizontal stabilizer tank transfer pumps due to excessive wear of the pump shaft carbon thrust bearing, which could cause sparks and/or a hot surface condition and consequent ignition of fuel vapor in the center wing tank or horizontal stabilizer tank during dry pump operation (no fuel flowing).

Actions Since Issuance of Previous Rule

In the preamble to AD 98–25–52, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Since the issuance of AD 98–25–52, the FAA has received information from the fuel pump manufacturer indicating that it has now determined the cause of the premature wear of the thrust carbon bearings of the center wing tank override/jettison fuel pumps, and the horizontal stabilizer tank transfer pumps. The thrust washer located in the pump shaft thrust bearing was coated with aluminum oxide, applied using a plasma spray method, and investigation revealed that this method has a life limit of less than 500 flight hours. Further investigation revealed that aluminum oxide coating applied to the thrust washer using a D-gun spray method has a life limit of more than 15,000 flight hours.

During operation at normal fuel pump rotation speeds (7,000 to 8,000 RPM), the steel-to-steel contact may produce sparks or hot spots sufficient to ignite fuel vapor from the center wing tank or horizontal stabilizer tank, when the pump is running dry. The center wing fuel tank pumps on 747–400 series airplanes are normally operated until the fuel in the tank is exhausted and the pump inlet is uncovered, exposing the fuel pump to dry or partially dry operation for a period of time during each flight when the center wing tank is used. The horizontal stabilizer tank on 747–400 series airplanes uses the same pumps and is also run out dry each time it is used. Replacement of the existing pumps with improved pumps having the correct thrust washers installed enhances airplane safety in that it eliminates the possibility that pumps with bad washers will be operated when the pump is running dry.

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 supersede AD 98–25–52 to continue to require revising the Airplane Flight Manual to include procedures to prevent dry operation of the center wing fuel tank override/jettison pumps and, for certain airplanes, to prohibit operation of the horizontal stabilizer tank transfer pumps in-flight. For certain airplanes, the proposed AD also would require the installation of improved fuel pumps, which would terminate the requirements of the existing AD.

Cost Impact

There are approximately 1,100 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 250 airplanes of U.S. registry would be affected by this proposed AD.

The AFM revisions that are currently required by AD 98–25–52 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $15,000, or $60 per airplane.

The replacements that are proposed in this new AD action would take approximately 25 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $375,000, or $1,500 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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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 removing amendment 39–10957 (63 FR 71214, December 24, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–158–AD. Supersedes AD 98–25–52, amendment 39–10957.

Applicability: All Model 747 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 (d)(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 contact between the rotating paddle wheel and the stationary end plates within the center wing tank override/jettison fuel pumps or horizontal stabilizer tank transfer pumps due to excessive wear of the pump shaft carbon thrust bearing, which can cause sparks and/or a hot surface condition and consequent ignition of fuel vapor in the center wing tank or horizontal stabilizer tank during dry pump operation (no fuel flowing), accomplish the following:

Restatement of Requirements of AD 98–25–52

Airplane Flight Manual (AFM) Revisions

(a) Within 7 days after December 29, 1998 (the effective date of AD 98–25–52, amendment 39–10957), revise the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''For Model 747–400 series airplanes equipped with a horizontal stabilizer tank, operation of the horizontal stabilizer tank transfer pumps is prohibited in flight.

A tripped circuit breaker of a center wing tank override/jettison pump or a tripped circuit breaker of a horizontal stabilizer tank transfer pump must not be reset until the associated fuel pump has been inspected for damage and any damage has been repaired.

The center wing tank override/jettison pumps must be operated in accordance with either option 1 or option 2 below.

Option 1

If the center wing tank override/jettison pumps are required for flight, the center tank must contain a minimum of 17,000 pounds (7,700 kilograms) at engine start. The fuel quantity indicating system of the center wing tank must be operative to dispatch with center wing tank fuel intended for use in the flight.

Select both center wing tank override/jettison pump switches off at or before the fuel quantity of the center wing tank reaches 7,000 pounds (3,200 kilograms). Note: On Model 747–400 series airplanes, the ''FUEL OVRD CTR L'' and ''FUEL OVRD CTR R'' engine indication and crew alerting system (EICAS) messages will be displayed with the switches off.

The center wing tank override/jettison pumps may be operated with less than 7,000 pounds of fuel in the center wing tank if required to address an emergency (such as fuel jettison or low fuel quantity).

Option 2

If the center wing tank override/jettison pumps are required for flight, the center tank must contain a minimum of 50,000 pounds (22,700 kilograms) at engine start. The fuel quantity indicating system of the center wing tank must be operative to dispatch with center wing tank fuel intended for use in the flight.

Select both center wing tank override/jettison pump switches off at or before center wing tank fuel quantity reaches 3,000 pounds (1,400 kilograms).

The center wing tank override/jettison pumps may be operated with less than 3,000 pounds of fuel in the center wing tank if required to address an emergency (such as fuel jettison or low fuel quantity).''

New Requirements of This AD

Determination of Correct Thrust Washer

(b) For airplanes having center wing fuel tank override/jettison pumps and, if installed, horizontal stabilizer tank transfer pumps, and all pumps meet the criteria specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD (*i.e.,* the correct thrust washer is installed), no further action is required by this AD.

(1) Verify the serial number on the pump data plate. The first four digits of the pump serial number represent the month and year of manufacture (*e.g.,* 0697 indicates a pump manufactured in June 1997). If the serial number date code indicates that the pump was manufactured prior to July 1996, or after November 1998, and if the operator can determine that the pump was not overhauled or repaired after July 31, 1996, then the pump has the correct thrust washer installed. If the pump was overhauled or repaired after July 31, 1996, and the operator has maintenance/overhaul records showing that the thrust washer was not replaced, or was replaced with the correct thrust washer, as specified in paragraph (c) of this AD, then the pump has the correct thrust washer installed.

(2) For airplanes having a date of manufacture prior to July 1996, if the operator can determine that the pump was not overhauled or repaired after July 31, 1996; and the pump was not replaced with a new pump manufactured between July 1996 and November 1998, then the pump has the correct thrust washer installed. If the pump was overhauled or repaired after July 31, 1996, and the operator has maintenance/overhaul records showing that the thrust washer was not replaced, or was replaced with the correct thrust washer, as specified in paragraph (c) of this AD, then the pump has the correct thrust washer installed.

(3) For airplanes having pumps installed containing a serial number on the pump data plate with the suffix ''P,'' the pump has the correct thrust washer installed.

Terminating Action

(c) For airplanes that do not meet the requirements specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD; or if the serial number on the pump data plate of any fuel pump cannot be determined: Within 24 months after the effective date of this AD, replace the applicable center wing fuel tank override/jettison pumps and horizontal stabilizer tank transfer pumps with Crane Hydro-Aire fuel pumps having a thrust washer, part number 60–06561, with a date code of 9848 (''98'' indicates the year 1998, and ''48'' indicates the 48th week in 1998), or higher, etched on the outside diameter of the thrust washer. Accomplishment of this paragraph terminates the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance (AMOC) 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. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector or Principal Maintenance Inspector, as applicable, who may add comments and then send it to the Manager, Seattle ACO.

(2) With the exception of FAA AMOC letter to Boeing (No. 98–140–437, dated December 9, 1998), AMOC's approved previously in accordance with AD 98–25–52, amendment 39–10957, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 2: 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

(e) 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 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29498 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–114–2–7480; FRL–6904–2]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, propose to fully approve a State Implementation Plan (SIP) revision submitted by the State of Texas establishing a low-Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in 95 counties in the eastern and central parts of Texas. Texas developed this fuel requirement to reduce emissions of volatile organic compounds (VOC) as part of the State's strategy to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Houston and Dallas-Fort Worth nonattainment areas. We are approving Texas' fuel requirements into the SIP because we found that the fuel requirement is in accordance with the requirements of the Clean Air Act (the Act) as amended in 1990 and is necessary for these nonattainment areas to achieve the ozone NAAQS.

DATES: Comments should be received on or before December 20, 2000.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following

locations. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

What Does the State's Low-RVP Regulation Include?

The State's low-RVP regulation requires that gasoline sold within the 95 attainment counties listed in the regulations have a maximum RVP of 7.8 psi. The regulations apply to gasoline sold at gasoline dispensing facilities between June 1 and October 1 of each year, and between May 1 and October 1 of each year for bulk plants, gasoline terminals and gasoline storage vessels.

The 95 central and eastern Texas counties affected by these rules are Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

How Does the Low-RVP Proposal Relate to Other SIP Activities in the State?

Current planning efforts by the State are directed at three nonattainment areas, Houston-Galveston (HGA), Dallas-Fort Worth (DFW), and Beaumont-Port Arthur (BPA). The attainment demonstration SIPs for two of these areas rely upon the low-RVP fuel to make their demonstrations. The SIPs are:

(1) The Dallas Attainment Demonstration, adopted on April 19, 2000, and submitted on April 25, 2000.

(2) The Houston Attainment Demonstration, proposed by the State on August 9, 2000. It will be submitted to EPA no later than December 2000.

Texas has adopted a Regional SIP to complement these attainment demonstration SIPs for Houston and Dallas, and provide additional emission reductions necessary for these areas to attain the ozone NAAQS. The Texas Regional SIP includes a list of controls that apply in the attainment areas surrounding these nonattainment areas. Specifically, the Texas Regional SIP includes three control programs to reduce emissions of nitrogen oxides (NO_X) and VOC: a regional low-RVP fuel program (the subject of this action), a stationary source program, and a Stage I vapor recovery program.

What Is Proposed?

We are proposing to approve a SIP revision establishing a low-RVP fuel requirement for gasoline sold in the 95 eastern and central counties of Texas. The State's low-RVP program will only apply in the listed attainment counties and will not apply in the designated nonattainment counties in the HGA, DFW, or BPA areas because these areas are already subject to federal fuel controls that are at least as stringent.

What Are the Clean Air Act Requirements?

This action is pursuant to section 110 of the Act. The approval of the State's fuel control measure must also meet the requirements of section 211(c)(4)(C). Under this section, we may approve a state fuel control into a SIP if we find that the control is ''necessary'' to achieve a NAAQS.

The EPA's August 21, 1997, Guidance on Use of Opt-in to RFG and Low-RVP Requirements in Ozone SIPs gives further guidance on what EPA is likely to consider in making a finding of necessity. The guidance sets out four issues to be analyzed:

1. The quantity of emissions reductions needed to achieve the NAAQS;

2. Other possible control measures and the reductions each would achieve;

3. The explanation for rejecting alternatives as unreasonable or impracticable; and

4. A demonstration that reductions are needed even after implementation of reasonable and practicable alternatives, and that the fuel control will provide some or all or the needed reductions.

In this notice of proposed rulemaking and accompanying Technical Support Document (TSD), we address these issues in a slightly different fashion. Though somewhat differently stated, the 4 items listed for consideration in the guidance are covered by the review done for this submittal. First, we explain the way in which the low-RVP program will help the nonattainment areas achieve the NAAQS. This serves the same purpose as the first item listed in the Guidance. Though we do not discuss the specific amount of reductions needed, this is the basis for satisfying the necessity showing required by the Clean Air Act. Second, we review the reasonableness and practicability of non-fuel control alternatives. This satisfies the second and third items listed in the Guidance and meets the specific requirements of section 211(c)(4)(C). Finally, we show that with implementation of all reasonable and practicable control measures and the regional fuel controls, the Houston and Dallas nonattainment areas may be able to just attain the ozone NAAQS but the ozone design value for these areas is expected to continue to exceed the one hour standard for ozone. This meets item number 4 in the Guidance and rounds off the demonstration that the measure is necessary.

What Did the State Submit?

The State submitted this revision to the SIP by letter from the Governor dated August 16, 1999. This was followed by two technical supplements dated October 13, 1999, and February 11, 2000. The SIP submittal contains Chapter 114, Texas Administrative Code (TAC), as adopted on June 30, 1999, and April 19, 2000, a request for a waiver from federal preemption pursuant to section 211(c)(4)(C) of the Act, and Texas laws providing the authority for the State to adopt and implement revisions to the SIP.

Texas submitted data and analyses to support a finding under section 211(c)(4)(C) that the State's low-RVP requirement is necessary for the DFW and HGA nonattainment areas to achieve the ozone NAAQS. The State has (1) identified the reduction in modeled peak values needed to achieve attainment of the ozone NAAQS; (2) identified all other reasonable and practical control measures; (3) shown that even with the implementation of all reasonable and practicable control measures, the State would need additional emissions reductions for these nonattainment areas to meet the ozone NAAQS (124 ppb) on a timely basis; and (4) demonstrated that the low-RVP requirement would contribute to those additional reductions.

Why Is the State Submitting this SIP for Low-RVP Gasoline in Attainment Areas of Texas?

Lowering the RVP in gasoline reduces VOC emissions. This is primarily through reducing evaporative losses from vehicle fuel tanks, lines, and carburetors as well as losses from gasoline storage and transfer facilities. To a lesser degree there is also a reduction in the VOCs in vehicle exhaust. Without the proposed fuel controls, the 95-county area subject to the proposed fuel control would receive gasoline with an RVP of up to 9.0 psi during the summer months. The State, based on modeling results using EPA's complex model, estimates that the proposed regional low-RVP program will reduce VOC emissions from automobiles by at least 14%.

Ozone and the precursor pollutants that cause ozone can be transported into an area from pollution sources hundreds of miles upwind. In order to address ozone pollution, EPA has traditionally focused its control strategies on reducing emissions within the nonattainment areas. EPA and states, however, have become increasingly aware of the contribution to ozone nonattainment from upwind sources of ozone and its precursors. Modeling and other analyses support the conclusion that lowering VOC emissions through Texas' regional low-RVP program will benefit the DFW and HGA nonattainment areas through one or more of three mechanisms: reducing ozone transport, reducing VOC transport, and reducing the transport of higher RVP gasoline into the nonattainment areas in commuters' vehicles. Each of these mechanisms is discussed in more detail in the TSD for this proposal.

The analysis in the TSD suggests that the low-RVP control in various counties will benefit the nonattainment areas in different ways. For some counties the primary benefit will be the reduction of ozone transport from those counties to the nonattainment counties, while in others the primary benefit will be a reduction in the emissions from commuters' vehicles. A single RVP control throughout the 95-county area captures all the attainment counties contributing to nonattainment in the DFW and HGA areas, and avoids a patchwork of fuel controls. We therefore agree with the State that it is reasonable to adopt a uniform program throughout the 95-county area to allow fuel supplies to be co-mingled in the pipeline, promote trading, and simplify tracking compliance.

Are There Any Reasonable and Practicable Alternatives to the Regional Low-RVP Program?

The State conducted thorough analyses of control measures available to benefit the DFW and HGA nonattainment areas. The HGA and DFW SIPs contain long lists of stationary source controls that are or will be required, expansion and upgrading of the vehicle inspection and maintenance programs, and a host of other measures that must be implemented including a ban on the use of residential lawn and garden equipment before noon during the summer in the HGA nonattainment area and delay of construction activities during daylight savings time in both HGA and DFW nonattainment areas. The attainment SIPs use a weight-of-evidence (WOE) analysis to show that implementation of all reasonable and practicable controls, including the regional low-RVP program, should just bring the DFW area into attainment. Attainment demonstration modeling for all nonattainment areas suggests that even with the implementation of all reasonable and practicable controls, the modeled peak value for the areas may exceed the 1-hour ozone standard and that additional reductions are necessary to achieve the standard.

The Metropolitan Planning Organizations in both the DFW and HGA areas examined several hundred options for potential reductions in each nonattainment area. At this point in time, other non-fuel reductions are either non-existent or considered impracticable. Texas also submitted a long list of non-fuel measures that it considered for implementation outside the nonattainment areas. These measures were also found by the State to be unreasonable or impracticable based primarily on cost and the time required to implement the measures.

Based on the State's analysis of the cost-effectiveness and the time required to implement these measures, we agree that there are no reasonable or practicable non-fuel control measures available to the State to achieve the ozone NAAQS. Compared to all measures outlined in the TSD, low-RVP fuel is the most reasonable and practicable measure available to reduce background ozone levels and curtail the transport of ozone and precursors into the nonattainment areas. The State estimates that the cost for implementing the low-RVP fuel will be less than 0.3 cents per gallon. In addition, the benefits of the low-RVP program will be felt immediately upon implementation.

The TSD includes a detailed review of the controls that the State has already proposed or adopted and the reasonableness and practicability of the non-fuel alternatives that are still available. A more complete description of the State's analysis of the measures considered for the attainment area may also be found in the October 13, 1999 technical supplement submitted by the State.

Is the Regional Low-RVP Fuel Control Program Necessary for Achieving the NAAQS?

The 1996 document, Guidance on Using Modeled Results to Demonstrate Attainment of the Ozone NAAQS, presents two approaches to demonstrating attainment, a statistical approach and a deterministic approach. For the purposes of the attainment demonstrations submitted for the DFW, and proposed for the HGA nonattainment areas, the deterministic approach was used. Though EPA's review is far from complete, CAMx modeling for both attainment demonstrations appears to predict that even with implementation of all reasonable and practicable measures, including the regional low-RVP control, the design values for the nonattainment areas will still be above the 1-hour ozone standard. It should be noted that EPA is working with the State to bring the areas into attainment. EPA will address the design value modeling and attainment demonstration for the various areas in separate actions to be published at future dates.

Preliminary review of attainment demonstration modeling submitted on April 25, 2000, for DFW appears to indicate that with all measures taken into account in the model, including the regional low-RVP program, the modeled peak value for the DFW area remains very close to or in excess of the NAAQS. Therefore, it is apparent that every ton of ozone reduction is necessary to achieve the 1-hour standard including those that result from the other measures adopted and proposed for the 95 attainment counties.

The Houston modeling submitted in November, 1999, showed, after modeling extensive controls including the low-RVP program, an estimated shortfall of 118 tpd of NO_X. The shortfall of NO_X represents additional reductions that the model would require to show a modeled peak ozone value of 124 ppb. While modeling submitted in November, 1999, indicated only a very slight benefit from VOC controls, more recent models which support the proposed attainment demonstration SIP

for HGA indicate a clear need for VOC reductions.

Further, Texas performed regional modeling (submitted in April 2000) which demonstrated that the VOC reductions provided by the regional low-RVP control are necessary to reduce ozone in the nonattainment areas. The models predicted that a mixture of NO_X and VOC controls, including the regional low-RVP control, would reduce modeled peak values. Texas proposed another revision to the Houston SIP on August 9, 2000. The new proposal with revised emission estimates has an estimated NO_X shortfall of only 78 tpd. As mentioned above, the modeling in the new proposal shows a greater sensitivity to VOC controls than previous modeling studies.

Does the State Submittal Meet the SIP Approval Requirements Under Section 110?

The Texas Regional SIP submittal, including the regional low-RVP fuel control program, meets the requirements outlined in section 110. The Texas rules for this SIP include adequate enforceability measures.

Texas submitted the fuel portion of the Texas Regional SIP under a Governor's letter dated August 16, 1999. The submittal contains the appropriate hearing actions, a preamble, and the regional low-RVP rules. The State also submitted technical supplements dated October 13, 1999, and February 11, 2000, that provided data on commuter patterns and an analysis of measures considered for the attainment area. The SIP was deemed complete by operation of law on February 16, 2000.

On February 9, 2000, the State proposed revisions to the fuel rules previously adopted in 30 TAC 114. Revisions included strengthening the enforcement provisions. The State adopted these rules on April 5, 2000. Revised chapter 114 rules were submitted under a Governor's letter dated April 25, 2000. The revisions strengthened enforcement provisions that EPA requested during the public comment period for the original submittal.

How Will the Program Be Enforced?

The Texas Natural Resource Conservation Commission will implement the low-RVP rule. Producers, importers, terminals, pipelines, truckers, rail carriers, and retail dispensing outlets are subject to provisions of this rule. Registration, recordkeeping, reporting, and certification requirements are included.

We find that these rules are an acceptable approach for enforcing the low-RVP gasoline program.

Proposed Action By EPA

Texas' regional low-RVP program will provide needed VOC and ozone reductions for the DFW and HGA ozone nonattainment areas. Without the program, the modeled peak ozone values for the nonattainment areas will continue to exceed the 1-hour ozone standard. The State demonstrated that the regional low-RVP fuel control program is necessary to help the DFW and HGA nonattainment areas achieve the 1-hour ozone standard and that no other reasonable or practicable alternatives remain that would bring about timely attainment. We are proposing to approve the Texas Regional Low-RVP Gasoline Program into the Texas SIP under § 110(k)(3) of the CAA as meeting the requirements of § 110(a) and Part D. We are also proposing to find that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use Voluntary Consensus Standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects 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, Volatile organic compounds.

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

Dated: November 3, 2000.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 00–29645 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2485; MM Docket No. 00–226; RM–10001.

Radio Broadcasting Services (Fair Bluff, North Carolina, Litchfield Beach, Johnsonville and Olanta, South Carolina)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, at the request of joint petitioners Atlantic Broadcasting Co., Inc., permittee of Station WSIM, Channel 287C3, Fair Bluff, North Carolina, and The Waccamaw Neck Broadcasting Company, licensee of Station WPDT, 286A, Johnsonville, South Carolina, seeks comment on a petition for rule making proposing the reallotment of Channel 287C3 from Fair Bluff, North Carolina, to Litchfield Beach, South Carolina, as the community's first local aural transmission service, and the reallotment of Channel 286A from Johnsonville, South Carolina, to Olanta, South Carolina, as the community's first local aural transmission service. Channel 287C3 can be allotted to Litchfield Beach in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioners' requested site, 0.4 kilometers (0.3 miles) South, at coordinates 33–27–47 NL and 79–06–05 WL. Channel 286A can be allotted to Olanta in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's requested site, 4.9 kilometers (3.0 miles) East, at coordinates 33–55–38 NL and 79–52–41 WL. *See* Supplementary Information.

DATES: Comments must be filed on or before December 26, 2000, and reply comments on or before January 10, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties in MM Docket No. 00–215 should serve petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 1990 M Street, N.W., Suite 510,1990 M Street, N.W., Suite 510 Washington, D.C. 20036, (Counsel to Atlantic Broadcasting Co. Inc.), Stephen T. Yelverton, Yelverton Law Firm, 601 Pennsylvania Ave., N.W., Washington, DC 20004 (Counsel to Waccamaw Neck Broadcasting Company).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, Docket No. 00–226, adopted October 25, 2000, and released November 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Petitioners are requested to provide further information to establish that Litchfield Beach and Olanta are communities for allotment purposes. They are also asked to provide information on any public interest benefit other than provision of a first local transmission service which would justify the grant of the reallotment of Channel 286A from Johnsonville to Olanta, as it would result in the removal of the sole local transmission service at Johnsonville.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina is amended by removing Fair Bluff, Channel 287C3.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Johnsonville, Channel 286A and adding Litchfield Beach, Channel 287C3, and Olanta, Channel 286A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–29626 Filed 11–17–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2482; MM Docket No. 00–222, RM–10002; MM Docket No. 00–223, RM–10003; MM Docket No. 00–224, RM–10004; MM Docket No. 00–225, RM–10005]

Radio Broadcasting Services; North English, IA; Pendleton, SC; Hamilton, TX; Munday, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four new allotments to North English, IA; Pendleton, SC; Hamilton, TX; and Munday, TX. The Commission requests comments on a petition filed by Iowa-Keokuk Radio (Russell Johnson, sole proprietor) proposing the allotment of Channel 246A at North English, Iowa, as the community's first local aural transmission service. Channel 246A can be allotted to North English in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) southwest of city reference coordinates. The coordinates for Channel 246A at North English are 41–27–15 North Latitude and 92–07–21 West Longitude. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before December 26, 2000, and reply comments on or before January 10, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Russell G. Johnson, Iowa-Keokuk Radio, 1240 Loomis Ave., Des Moines, Iowa 50315 (Petitioner for the North English, IA proposal); H. David Hedrick, P.O. Box 27, 317 Stonegables Ct., Gray, GA 31032 (Petitioner for the Pendleton, SC proposal); Stargazer Broadcasting, Inc., P.O. Box 519, Woodville, TX 759779 (Petitioner for the Hamilton, TX proposal); and Wm. Brett Richardson and Robert Lewis Thompson, Thiemann Aitken & Vohra, L.L.C., 908 King Street, Suite 300, Alexandria, VA 22314 (Counsel for MAREE Communications).

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–222; MM Docket No. 00–223; MM Docket No. 00–224; and MM Docket No. 00–225, adopted October 25, 2000, and released November 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

The Commission requests comments on a petition filed by H. David Hedrick proposing the allotment of Channel 240A at Pendleton, South Carolina, as the community's first local FM aural transmission service. Channel 240A can be allotted to Pendleton in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 240A at Pendleton are 34–38–49 North Latitude and 82–46–37 West Longitude.

The Commission requests comments on a petition filed by Stargazer Broadcasting, Inc. proposing the allotment of Channel 299A at Hamilton, Texas, as the community's second local aural transmission service. Channel 299A can be allotted to Hamilton in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 kilometers (7.1 miles) northwest of city reference coordinates. The coordinates for Channel 299A at Hamilton are 31–46–54 North Latitude and 98–12–08 West Longitude.

The Commission requests comments on a petition filed by MAREE Communications proposing the allotment of Channel 270C1 at Munday, Texas, as the community's first local aural transmission service. Channel 270C1 can be allotted to Munday in compliance with the Commission's minimum distance separation requirements with a site restriction of 25 kilometers (15.5 miles) northwest of city reference coordinates. The coordinates for Channel 270C1 at Munday are 33–37–48 North Latitude and 99–46–57 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding North English, Channel 246A.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Pendleton, Channel 240A.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Hamilton, Channel 299A, and Munday, Channel 270C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media bureau.

[FR Doc. 00–29624 Filed 11–17–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2481; MM Docket No. 00–101; RM–9885]

Radio Broadcasting Services; Buckhead and Sparta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Commission denies the request of Barinowski Investment Company to substitute Channel 274C3 for Channel 274A, reallot the channel from Sparta to Buckhead, GA, as its first local aural service, and modify the license of Station WPMA–FM accordingly. *See* 65 FR 37753, June 16, 2000. The Commission found that the proposal would not result in a preferential arrangement of allotments because it would remove the sole local aural service from the more populous community and result in more presently underserved people losing service.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–101, adopted October 25, 2000, and released November 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–29623 Filed 11–17–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AH71

Migratory Bird Permits; Review of Falconry Education Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for comments.

SUMMARY: We are soliciting public comments to help us develop options for regulating falconry education facilities. We have two pending applications for permits to conduct falconry and conservation educational programs with migratory birds pursuant to section 704 of the Migratory Bird Treaty Act of 1918, as amended. Some of the activities outlined in these applications constitute the practice of falconry by instructors and participants. Falconry is specifically regulated under certain Fish and Wildlife Service regulations, and only persons who qualify for falconry permits by meeting minimum requirements may possess raptors (birds of prey) for their use in hunting prey. The applicants' programs feature instructors who maintain falconry permits, but they seek to exempt their participants from meeting minimum requirements and obtaining falconry permits. We are requesting public comments on whether we should deny these permit requests, or whether we should amend the falconry regulations to create additional, and less restrictive, opportunities for the public to participate in falconry.

DATES: Written comments should be submitted by January 19, 2001, to the address below.

ADDRESSES: You may mail or deliver comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203. You also may submit comments via the Internet to: *falconry__programs@fws.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service; (703) 358–1714.

SUPPLEMENTARY INFORMATION: Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation that we have received your message, contact us directly at (703)358–1714.

Background

Falconry is the sport of hunting with trained raptors to take game animals, such as rabbits and squirrels, as defined in 50 CFR 21.3. In 1972, raptors came under the protection of the Migratory Bird Treaty Act, and in 1976 we promulgated regulations for a joint State/Federal falconry program. The regulations set rigorous requirements for entry into the sport, specified raptor housing and equipment standards, and set stringent reporting and marking requirements. Somewhat cautionary and restrictive, the regulations were promulgated at a time when there was considerable concern over the diminished status of many raptor populations. The falconry regulations reflected a sincere attempt to satisfy diverse and often conflicting interests while at the same time providing adequate protection for raptors. In 1989, we amended the regulations to establish simpler, less restrictive rules governing the use of most raptors because their populations were generally increasing, and the number of falconers was relatively small.

Currently, approximately 4,000 persons are permitted to practice falconry in the United States, and 400 persons are permitted to breed raptors in captivity. Persons who want to practice falconry must comply with the falconry regulations in 50 CFR 21.28–29, in addition to complying with State falconry and hunting laws. Persons who want to breed raptors must comply with the raptor propagation regulations in 50 CFR 21.30, in addition to complying with State wildlife propagation laws.

The falconry regulations require individuals to have knowledge, experience, equipment, and raptor housing before we may issue them a falconry permit. Permits are issued in three classes—Apprentice, General, and Master—depending on the applicant's age and experience. A person must have a Federal (and State) falconry permit before they may possess raptors, train them by various handling techniques, and use them in hunting. The regulations also prescribe the species and numbers of raptors that falconers may possess, which vary by the class of permit. We further allow permitted falconers to use the birds in their possession for conservation education and the demonstration of falconry to audiences.

Special Purpose Permits

Two applicants have requested permits issued under Special Purpose (50 CFR 21.27) to possess raptors to use in falconry and conservation educational programs. Because of the wide nature of permits that may be issued under Special Purpose, we determine these permit conditions individually. We have issued numerous Special Purpose permits for conservation education purposes, and the conditions for these permits are largely standardized due to the large numbers of this type. Most of these conservation education permits authorize the possession of raptors for use in programs where birds are displayed to an audience, and the audience participants are not allowed to handle the birds.

We have previously issued three Special Purpose permits for falconry and conservation education facilities, and two of these permits remain active. These active permits are issued to the British School of Falconry (BSF), Manchester, Vermont; and the Falconry and Raptor Education Foundation (FAREF), White Sulphur Springs, West Virginia. In general, we authorized these permittees to possess a specified number of raptors listed in 50 CFR 10.13. This authorization allowed the facilities to have more birds than they could possess under their instructors' individual falconry permits, which allows them to provide falconry opportunities to more participants.

The permits issued to BSF and FAREF require the birds to be captive-bred, and also require the facilities to comply with certain parts in the falconry regulations, including raptor housing, leg-banding for identification, and submission of raptor acquisition report forms. Although we require the instructors at the BSF and FAREF to maintain either General or Master class falconry permits, we do not require participants to obtain their own permits.

The BSF and FAREF programs allow participants without prior experience to handle the birds in various ways. Typically, the instructor first places a raptor on the gloved hand of each participant. The participant then grasps a leash attached to the bird's legs, and releases and recalls the bird using whistles and food rewards. Both facilities also provide raptor conservation educational programs to the public, which may include the limited handling of birds on the gloved hand of several audience members.

The permit issued to the BSF expires on December 31, 2000. The permit issued to the Falconry and Raptor

Education Foundation expired on December 31, 1999, but because they submitted a renewal application at least 30 days prior to the expiration date, their permit is still active. Additionally, we have received a new application from New England Falconry, Shutesbury, Massachusetts, for a similar, but expanded, Special Purpose permit.

The new applicant requests a permit to possess captive-bred Harris hawks, prairie falcons, and peregrine falcons for the purpose of educating the public about falconry, raptors, conservation and the environment, through the experience of falconry. The applicant requests to provide a variety of educational programs, including programs similar to those provided by the BSF and FAREF, which allow the handling of birds. In addition, the applicant requests authority to provide hunting programs, wherein the participant would hold a lofting pole (T-shaped pole with perch on top), and the instructor would place the raptor on the pole. The bird, although trained to respond to handlers, would be physically unrestrained, and could fly at prey flushed by dogs. If a kill is made, the instructor would remove the bird from the prey, and return it to the lofting pole held by the participant. Previously, we had expressly prohibited the BSF from conducting similar hunting programs after determining that the participants were clearly practicing falconry as defined in 50 CFR 21.3.

Determination of the Scope of Falconry

Because we have received public comments regarding these permits, we reviewed the falconry regulations and the definitions provided in 50 CFR 10.12 and 21.3. We have determined that participants at the BSF and FAREF are practicing falconry as defined and regulated under 50 CFR 21.28–29 and therefore must fully comply with these regulations. In arriving at this determination, we concluded that the falconry regulations clearly encompass all activities relating to the sport of falconry, including the housing, handling, and training of raptors, in addition to their use in hunting.

We now need to determine whether to continue to allow the operation of falconry educational facilities, and, if so, with what requirements. In order to allow their continuation, we must either impose a handling restriction for participants on these Special Purpose permits (similar to most other educational permits), or expand the falconry regulations by amendment.

Public Comments Solicited

Interested persons are invited to submit comments on continuing to allow the operation of falconry education facilities in the United States. We request suggestions, materials, recommendations, and arguments. We invite comments from the public; permitted falconry facilities; falconry organizations; environmental organizations; corporations; local, State, Tribal and Federal agencies; and any other interested party. Please ensure that any comments submitted in response to this request for comments pertain to issues presented in this notice.

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 rulemaking record, which we will honor to the extent 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 or organizations or businesses, available for public inspection in their entirety.

Comments are particularly sought concerning the following issues:

(1) Whether we should amend the falconry regulations to allow the operation of falconry education facilities to include active participant handling of raptors.

(2) Whether participants at hands-on falconry education facilities should be required to obtain individual permits, and what type(s) of permit classes should be created for participants, with requirements such as age, examinations, and experience.

(3) What type(s) of permitting requirements should be created for these facilities, and the requirements for obtaining these permits, such as instructor qualification, raptor equipment and housing, and commercial status of the facilities (profit vs. nonprofit).

(4) What program restrictions should be placed on falconry education facilities, such as limiting participants to raptor handling by release and recall only, or whether participants should participate in hunting activities, and how.

(5) What program requirements should be placed on falconry education facilities, such as requiring a specified core curriculum, or requiring that conservation education be included.

(6) Which raptor species should be used, and/or whether species used at falconry education facilities should be limited to nonindigenous species, which do not require MBTA permits.

(7) What benefits are obtained by participants in falconry education facilities, including whether participants have easier access to explore the sport of falconry, and whether participants have used their experience to better qualify for an Apprentice class permit.

(8) Whether participants gain enough knowledge to properly handle raptors without harming the birds or themselves.

(9) Whether more people will apply for falconry permits after attending falconry education facilities, and whether suppliers of captive-bred raptors (regulated under 50 CFR 21.30) could provide for an increased demand for birds, or whether impacts to wild stock may result.

(10) Whether the falconry education facilities generally contribute to awareness of the resource by teaching more people about the conservation of raptors.

(11) How the economies of local communities would be impacted by the co-location of a falconry education facility.

(12) How raptor propagators may be affected economically from changes in sales of captive-bred birds.

(13) How State wildlife agencies would be affected, including whether administrative workloads would increase, whether amended regulations would conflict with State laws, and whether States would have greater or reduced flexibility in administering the joint permitting system.

We welcome comments on the issues described above and encourage the submission of new options or any suggestions.

Paperwork Reduction Act

This request for comments does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collection associated with migratory bird permit programs is covered by an existing OMB approval No. 1018–0022, which expires on 02/28/2001. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

Authorship: The primary author of this notice is Diane Pence, Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01585.

Authority: The authority for this notice is the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712).

Dated: November 9, 2000.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 00–29562 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 224
Monday, November 20, 2000

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

Animal and Plant Health Inspection Service

[Docket No. 00–113–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for suggested agenda topics.

SUMMARY: We are issuing this notice to inform producers and users of veterinary biological products, and other interested individuals, that we will be holding our tenth annual public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. We are in the process of planning the meeting agenda and are requesting suggestions for topics of general interest to producers and other interested individuals.

DATES: The public meeting will be held on Tuesday and Wednesday, April 10 and 11, 2001, from 8 a.m. to approximately 5 p.m. each day.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics, contact Dr. Richard E. Hill, Jr., Director, Center for Veterinary Biologics, Veterinary Services, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120, or e-mail CVB@usda.gov. For registration information, contact Ms. Kathy Clark at the same address and fax number; phone (515) 232–5785 extension 128; or e-mail Kathryn.K.Clark@usda.gov.

SUPPLEMENTARY INFORMATION: Since 1989, the Animal and Plant Health Inspection Service (APHIS) has held nine public meetings in Ames, IA, on veterinary biologics. The meetings provide an opportunity for the exchange of information between APHIS representatives, producers and users of veterinary biological products, and other interested individuals. APHIS is in the process of planning the agenda for the tenth annual meeting, which will be held on April 10 and 11, 2001.

The agenda for the meeting is not yet complete. Topics that have been suggested include: (1) Labeling; (2) duration of immunity/efficacy; (3) delivery systems; (4) risk assessment; (5) target animal safety; (6) animal care; and (7) international harmonization. Before finalizing the agenda, APHIS is seeking suggestions for additional meeting topics from the interested public.

We would also like to invite interested individuals to use this meeting to present their ideas and suggestions concerning the licensing, manufacturing, testing, and distribution of veterinary biologics.

Please submit suggested meeting topics (for both breakout and general sessions) and proposed presentation titles to the person listed under **FOR FURTHER INFORMATION CONTACT** on or before December 15, 2000. For proposed presentations, please include the name(s) of the presenter(s) and the approximate amount of time that will be needed for each presentation.

After the agenda is finalized, APHIS will announce the schedule in the **Federal Register**.

Done in Washington, DC, this 14th day of November 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–29614 Filed 11–17–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request OMB approval for a new information collection from Summer Food Service Program (SFSP) state agencies, sponsoring organizations, former sponsoring organizations, site directors, school food authorities, and from parents or guardians of elementary-school-age children who live near SFSP sites.

DATES: Comments on this notice must be received by January 19, 2001 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information should be directed to Jane Allshouse, Diet, Safety, and Health Economics Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW., Washington, DC 20036–5831, tel. 202–694–5449. Submit electronic comments to *allshous@ers.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for ERS collection of information for an SFSP Implementation Study.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: Approval for new data collection from SFSP state agencies, sponsoring organizations, former sponsors, site directors, School Food Authorities near SFSP sites, and parents or guardians of elementary-school-age children who live near SFSP sites.

Abstract: USDA needs to obtain detailed information on SFSP operations and administration and to learn more about the factors that contribute to the large gap in participation levels between the National School Lunch Program (NSLP) and the SFSP. Such knowledge will help the USDA determine whether future changes in SFSP policy are warranted. Currently, very little administrative data are collected at the national level on the operations of this program. Furthermore, the last national study of the program collected data in 1986.

To evaluate how program operations contribute to participation levels and the nutritional benefits of SFSP participation, and to study the characteristics of participants and

eligible nonparticipants and the factors affecting participation, many kinds of information must be obtained. Data for this study will be collected from five separate, but related, constituencies:

- Program staff at the state agency or USDA Food and Nutrition Service (FNS) regional office.
- Current SFSP sponsors, who may be School Food Authorities, government agencies, public or nonprofit residential camps, National Youth Sports Camps, or other nonprofit organizations.
- Former SFSP sponsors who recently left the program.
- Site directors (in conjunction with site visits to observe operations, meal content, and the extent of plate waste).
- Parents or guardians of participating and eligible nonparticipating children of elementary school age who live near SFSP sites.

The data will be collected on a one-time basis in 2001, to provide USDA and Congress with information prior to the next reauthorization of the SFSP.

The information collected will help USDA to describe program operations at all administrative levels, and to identify possible barriers to program participation by low-income children.

Obtaining sample frame information for the study will require data collection at several stages. State agencies will be contacted several times for lists of sponsors and their sites. Some sites operating in the prior year will be selected as locations for the participant-nonparticipant study, and School Food Authorities near these sites will be contacted to request lists of students who receive free or reduced-price school lunches at the elementary schools closest to the selected sites. These school lists will provide the sample frame for the parent survey. Sponsors selected for the sample will be contacted to provide updated site lists in early summer.

State data collection will involve telephone interviews with state administrators from all 54 states and territories that offer the SFSP (or, in a few states, with the FNS regional office staff who administer the program).[1] In addition, states will be asked to provide administrative data on the sponsors and sites sampled for detailed study. At substate levels, samples will be selected to provide estimates with a 10 percent coefficient of variation or less, when weighted by the number of participants served at each level. All samples will be nationally representative; they will be selected with probability proportional to size, where the measure of size will be average daily attendance at SFSP sites administered. A national sample of 120 sponsors will have the option of completing a self-administered mail survey or a telephone interview. One hundred former sponsors will be interviewed by telephone to provide information on why sponsors leave the SFSP. Site directors at 150 sites will be interviewed in person, and their sites will be observed by trained site visitors. Finally, a sample of 1,200 parents or guardians of elementary-school-age children eligible to participate at nearby SFSP sites will be interviewed by telephone, using computer-assisted telephone interviewing (CATI).

Respondent burden will be minimized for the parent survey by using CATI methods to streamline the interviewing process, and by carefully training interviewing staff on survey procedures. Burden will be minimized at other levels by relying on administrative records for variables that are consistently available across states. In addition, states, sponsors, and School Food Authorities will be encouraged to provide lists or other administrative records in whatever form is most convenient to them.

Responses will be voluntary and confidential, except for aggregate data that are already published from administrative records. To ensure confidentiality, data will be reported only in tabular form, with analysis cells large enough to prevent identification of individual agencies or families. In addition, identifying information will be kept only by the contractor and will be released only to the contractor's internal staff who need it directly for the survey and analysis operations.

Estimate of Burden: To develop the sample frame and obtain administrative records, we estimate the burden to be as follows:

State administrators—40 hours each (Sponsor and site lists and administrative records will only be obtained for the 50 states and the District of Columbia.)

Sponsors—4 hours each

School Food Authorities—8 hours each

To complete the interviews, the estimated burden is:

State administrators—1 hour to prepare for the interview, 45 minutes to complete the interview[2]

Sponsors—1 hour to complete either the self-administered questionnaire or the telephone interview, 30 minutes to look up information for the interview, plus a 15-minute phone call to inform sponsor about site visits

Former Sponsors—30 minutes each

Site Directors—30 minutes for the interview, plus 30 minutes for explanation and discussion of the site visit, including the meal and plate waste observation

Eligible Parents or Guardians—25 minutes each

Ineligible Parents or Guardians—2 minutes each for screening questions[3]

Respondents: Respondents include federal, state, and local government staff, school district staff, and staff from local nonprofit organizations that sponsor the SFSP or have in the recent past, and private citizens.

Estimated Number of Respondents: 1,655 in total: 55 state administrators, 120 sponsors, 30 school food authorities, 100 former sponsors, 150 site directors, 1,200 parents or guardians of elementary-school-age children.

Estimated Total Annual Burden on Respondents: Total of 3768 hours.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address stated in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: October 30, 2000.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 00–29563 Filed 11–17–00; 8:45 am]

BILLING CODE 3410–18–P

[1] The FNS regional office administers the program in Michigan and Virginia, and divides responsibilities in New York with the New York Department of Education. Thus, there will be two state interviews in New York, or 55 total.

[2] There will be two state interviews for New York, as noted above.

[3] Parents or guardians will be ineligible if their children are away for the summer, or if the family has moved out of the area near the SFSP site.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on December 5, 2000, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Committee organization.
3. Pending business.
4. Special reports.
5. New initiatives.
6. Presentation of papers or comments by the public.
7. Summary and actions.

Closed Session

8. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 11, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: November 14, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–29597 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1125]

Approval for Expansion of Subzone 61D Merck, Sharp & Dohme Quimica De Puerto Rico, Inc. Plant Arecibo, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Exports Development Corporation, grantee of FTZ 61, has requested authority on behalf of Merck, Sharp & Dohme Quimica de Puerto Rico, Inc. (Merck), to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61D at the Merck plant in Arecibo, Puerto Rico (FTZ Docket 49–2000, filed 8/10/00);

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 51293, 8/23/00);

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on manufacturing authority when the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the FTZ staff has reviewed the proposal, taking into account the criteria of 15 CFR 400.31 and 400.32, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to 15 CFR 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the FTZ Act and the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 9th day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–29633 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1126]

Approval for Expansion of Subzone 61E Merck, Sharp & Dohme Quimica De Puerto Rico, Inc. Plant Barceloneta, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Exports Development Corporation, grantee of FTZ 61, has requested authority on behalf of Merck, Sharp & Dohme Quimica de Puerto Rico, Inc. (Merck), to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61E at the Merck plant in Barceloneta, Puerto Rico (FTZ Docket 50–2000, filed 8/10/00);

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 51293, 8/23/00);

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on manufacturing authority when the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the FTZ staff has reviewed the proposal, taking into account the criteria of 15 CFR 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to 15 CFR 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the FTZ Act and

the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 9th day of November 2000.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–29634 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed-circumstances administrative review of the antidumping duty order on brake rotors from the People's Republic of China. Based on this information, we preliminarily determine that Laizhou Auto Brake Equipment Co., Ltd. is the successor-in-interest to Laizhou Auto Brake Equipments Factory for purposes of determining antidumping liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (April 2000).

Background

On April 17, 1997, the Department published in the **Federal Register** the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') (62 FR 18740). On September 29, 2000, Laizhou Auto Brake Equipment Co., Ltd. (''LABEC'') submitted information and documentation in support of its claim that it is the successor-in-interest to Laizhou Auto Brake Equipment Factory (''LABEF'') and requested that the Department conduct a changed-circumstances review to determine whether LABEC should receive the same antidumping duty treatment as is accorded to LABEF with respect to the subject merchandise.

Scope of Review

The products covered by this review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans, recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those rotors which have undergone some drilling and on which the surface is not entirely smooth. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, and Volvo). Brake rotors covered in this review are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron which contain a steel plate but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

In order to determine whether to initiate a changed-circumstances review with respect to LABEC, the Department as a matter of practice first must conduct a separate rates analysis of the company. In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate.

Based on information contained in its September 29, 2000, submission, LABEC is registered in the People's Republic of China (''PRC'') as a limited liability company owned by private individuals. Thus, a separate rates analysis is necessary to determine whether LABEC is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (''*Bicycles*'') 61 FR 19026 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control, and therefore entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

LABEC has placed on the administrative record documentation to demonstrate absence of *de jure* governmental control, including the 1994 ''Foreign Trade Law of the People's Republic of China,'' and the ''Administrative Regulations of the People's Republic of China Governing

the Registration of Legal Corporations,'' promulgated on June 3, 1988.

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of stock companies including limited liability companies. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* (''*Furfuryl Alcohol*'') 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to LABEC.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide* and *Furfuryl Alcohol*.

LABEC asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, statements contained in LABEC's September 29, 2000, submission indicate that the company does not coordinate its prices with other exporters. This information supports a preliminary finding that there is *de facto* absence of governmental control of the export functions of LABEC. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215 (October 23, 1997). Consequently, we have preliminarily determined that LABEC has met the criteria for the application of a separate rate.

Initiation and Preliminary Results of the Review

In its September 29, 2000, submission, LABEF advised the Department that, effective January 2000, its owners changed the name of the company to LABEC. The company's name change resulted when two of the original five owners sold their shares in the company and the remaining three original owners then changed the registration of the company from a collectively-owned company to a limited liability company with the Laizhou Industrial and Commercial Administration Bureau (''LICAB''). In its submission, LABEF states that all personnel, operations, and facilities remain essentially unchanged as a result of changing the name of the company to LABEC.

Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed-circumstances review to determine whether LABEC is the successor-in-interest to LABEF for purposes of determining antidumping duty liability with respect to the subject merchandise. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review,* 59 FR 6944 (February 14, 1994); *Canadian Brass, and Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 63 FR 50880 (September 23, 1998). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

We preliminarily determine that LABEC is the successor-in-interest to LABEF, following LABEF's name change to LABEC and its change in company registration with LICAB as a result of decisions made by LABEF's original owners. LABEF has submitted documentation and statements in support of its claim that changing its name to LABEC has resulted in no significant changes in either production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) a letter to LICAB requesting its name to be changed to LABEC; (2) a letter from LICAB granting LABEF's proposed name change to LABEC; and (3) LABEC's business license issued by LICAB. Because LABEC has presented evidence to establish a *prima facie* case of its successorship status, we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii).

Thus, we preliminarily determine that LABEC should receive the same antidumping duty treatment with respect to brake rotors as the former LABEF. If these preliminary results are adopted in our final results of this changed-circumstances review, we will instruct the Customs Service to suspend shipments of subject merchandise made by LABEC at LABEF's cash deposit rate (*i.e.,* zero percent). The shipments of subject merchandise to be suspended are those which are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed-circumstances review.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 50 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 57 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 64 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should

contact the Department for the date and time of the hearing. The Department will publish the final results of this changed-circumstances review, including the results of its analysis of issues raised in any written comments, within 270 days after the date of this initiation or within 80 days if all parties agree to our preliminary results.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: November 13, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29629 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Cut-to-Length Carbon Steel Plate From Romania; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of the antidumping duty administrative review for the period August 1, 1999 through July 31, 2000.

SUMMARY: On October 2, 2000, in response to a request made by Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation (collectively, petitioners), the Department of Commerce (the Department) published a notice of initiation of antidumping duty administrative review of cut-to-length carbon steel plate from Romania, for the period August 1, 1999 through July 31, 2000. Because the petitioners have withdrawn the only request for review, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Background

On August 31, 2000, petitioners requested that the Department conduct an administrative review for the period August 1, 1999 through July 31, 2000 of Sidex, S.A., a producer of the subject merchandise, Metalexportimport, S.A., and Windmill International PTE, Ltd., exporters of the subject merchandise. There were no other requests for review. On October 2, 2000, the Department published a notice of initiation of antidumping duty administrative review of cut-to-length carbon steel plate from Romania, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 58733 (October 2, 2000). On October 3, 2000, petitioners withdrew their request for review.

Rescission of Review

Pursuant to Departmental regulations, the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). The petitioners' withdrawal of their request for review was within the 90-day time limit; accordingly, we are rescinding the administrative review for the period August 1, 1999 through July 31, 2000, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: November 9, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 00–29631 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of the Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Samantha Denenberg, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2243 and (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1999).

Background

On May 1, 2000, the Department published a notice of initiation of the administrative review of the antidumping duty order on Certain Welded Carbon Steel Pipes and Tubes from Thailand, covering the period March 1, 1999 through February 29, 2000 (65 FR 25303). The preliminary results are currently due no later than December 1, 2000.

Extension of Time Limit for Preliminary Results

Because of the complex issues enumerated in the Memorandum from Barbara E. Tillman to Joseph A. Spetrini, *Extension of Time Limit for the*

Preliminary Results of Administrative Review of Certain Welded Carbon Steel Pipes & Tubes from Thailand, dated November 6, 2000, and on file in the Central Records Unit (CRU) of the Main Commerce Building, Room B–099, we find that it is not practicable to complete this review by the scheduled deadline. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the preliminary results of review by 120 days (i.e., until March 31, 2001).

Dated: November 6, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–29630 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Emory University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 00–027. *Applicant:* Emory University, Atlanta, GA 30322. *Instrument:* Slice Physiology Setup. *Manufacturer:* Luigs and Neumann, Germany. *Intended Use:* See notice at 65 FR 58046, September 27, 2000. *Reasons:* The foreign instrument provides superposition of recorded fluorescent images with positional information from a microscope for precise positioning of tissue structures in the field of interest in the microscope. *Advice received from:* National Institutes of Health, October 30, 2000.

Docket Number: 00–031. *Applicant:* University of Georgia, Athens, GA 30602. *Instrument:* (Two) Plant Growth Chambers, Model GC8–2H. *Manufacturer:* Enconair Ecological Chambers, Canada. *Intended Use:* See notice at 65 FR 59175, October 4, 2000. *Reasons:* The foreign instrument provides: (1) Capability to diagnose malfunction of chamber via telephone modem connection and (2) automatic notification of laboratory personnel of chamber malfunction by factor monitoring using synthesized voice messages. *Advice received from:* National Institutes of Health, October 30, 2000.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument. We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 00–29632 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 96–A0005.''

Spirit Index, Ltd. original Certificate was issued on November 15, 1996 (61 FR 59217, November 21, 1996).

A summary of the application for an amendment follows.

Summary of the Application

Applicant: Spirit Index, Ltd., 342 White Horse Pike, Clementon, New Jersey, 08021–4345.

Contact: Thomas P. Kaczur, Vice President, Telephone: (800) 581–1002.

Application No.: 96–A0005.

Date Deemed Submitted: November 7, 2000.

Proposed Amendment: Spirit Index, Ltd. seeks to amend its Certificate to change the name of the Certificate holder from Spirit Index, Ltd. originally located at 342 White Horse Pike to Thomas P. Kaczur at 259 Rockaway Street, Islip Terrace, New York 11752–1104.

Dated: November 13, 2000.

Morton Schnabel,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 00–29612 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111500E]

NOAA's Teacher-At-Sea Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 19, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judy Sohl, OMAO, MOP1, 1801 Fairview Ave East, Seattle WA 98102-3767 (phone 206–553–2633).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA provides educators an opportunity to gain first-hand experience with field research activities by allowing them to spend up to three weeks at sea on a NOAA research vessel. Applications are necessary to select participants, and educators participating on a cruise must submit a report detailing their experiences and resulting ideas for classroom activities.

II. Method of Collection

Paper forms or reports are submitted. The forms are available over the Internet.

III. Data

OMB Number: 0648–0283.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Individuals (teachers, educators).

Estimated Number of Respondents: 375.

Estimated Time Per Response: 1.25 hours for an application; 15 minutes for a recommendation; and 2 hours for a follow-up report.

Estimated Total Annual Burden Hours: 309.

Estimated Total Annual Cost to Public: $536.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 14, 2000

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–29641 Filed 11–17–00; 8:45 am]

BILLING CODE 3510-12-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111300D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: The meeting will begin on Monday, December 4, 2000, at 9 a.m. through Friday, December 8, 2000, concluding at 12 p.m.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Southeast Fisheries Science Center (SEFSC), 75 Virginia Beach Drive, Miami, Florida.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone 813–228–2815.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. They advise the Council on the status of stocks and, when necessary, recommend a level of allowable biological catch (ABC) needed to prevent overfishing, or to effect a recovery of an overfished stock. They may also recommend catch restrictions needed to attain management goals.

The RFSAP will convene to review sensitivity analyses of the 1999 red grouper stock assessment which was conducted by the NMFS at the request of the RFSAP, and recommend a range of ABC for 2001. The analyses were requested by the RFSAP at its previous meeting in August 2000 to examine the sensitivity of stock assessment results to the inclusion or exclusion of older, and possibly questionable, landings data provided by Cuba for years prior to 1976; the assumed level of release mortality of undersized fish; and the shape of the red grouper stock-recruitment relationship. NMFS has completed the analyses and declared the Gulf of Mexico stock of red grouper to be overfished, based on the 1999 stock assessment, and the results of the additional analyses. However, a peer review of the analyses has not yet been conducted by the RFSAP. The severity of the overfished condition, and the ABC range needed to effect a recovery also have yet to be determined.

Pending completion by NMFS of additional analyses requested by the RFSAP of the 1998 vermilion snapper assessment and 2000 assessment update, the RFSAP will review these analyses and may recommend a range of ABC for 2001 to stop overfishing from occurring in the vermilion snapper fishery. Some model scenarios from the 1998 stock assessment suggested that the stock was being fished at a rate that could result in it becoming overfished. It was, therefore, classified by NMFS as not overfished butapproaching an overfished condition. The analyses requested by the RFSAP were to examine the robustness and relationship of the vermilion snapper assessment tuning indices to changes in the directed fishery for red snapper.

The RFSAP may also review the results of additional red snapper recovery projections conducted by NMFS at the request of the Council.

These additional projections are based on assumptions of juvenile red snapper shrimp trawl bycatch mortality and natural mortality suggested by an outside biologist which differ from the assumptions used by NMFS. The outside biologist has proposed that the shrimp trawl bycatch mortality is lower, and the natural mortality is higher, than those used in the NMFS red snapper stock assessments. The results of these analyses will initially be presented by NMFS at the November 13–17, 2000, Council meeting in Biloxi, Mississippi, and may subsequently be reviewed by the RFSAP if requested by the Council. The analyses must be peer reviewed by the RFSAP before they can be used as a basis for changing the red snapper total allowable catch.

Although non-emergency issues not on the agendas may come before the RFSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the RFSAP will be restricted to those issues specifically identified in theagendas 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 action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29637 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111500A]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council's Joint Dogfish Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, December 7, 2000, from 10 a.m. – 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton International Hotel, BWI Airport, 7032 Elm Road, Baltimore, MD; telephone 410–859–3300.

Council Address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904. New England Fishery Management Council, 50 Water Street, The Tannery — Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone 302–674–2331, ext. 19, or Paul Howard, Executive Director, New England Fishery Management Council; telephone 978–465–0492.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop recommendations to the Mid-Atlantic and New England Fishery Management Councils for management measures for the spiny dogfish fishery for the 2001–2002 fishing year based on recommendations of the Spiny Dogfish Monitoring Committee.

Although non-emergency issues not contained in this notice may come before these Councils for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the meeting date.

Dated: November 15, 2000

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–29640 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103000C]

Marine Mammals; File No. 821–1588

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Texas A&M University, Department of Marine Biology, 5007 Avenue U, Galveston, TX 776551, (Principal Investigator: Dr. Randall W. Davis), has applied in due form for a permit to take marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 20, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312);and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson and Simona Roberts, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–227).

The application has three different projects: PROJECT I. — Hunting Behavior and Energics of Weddell Seals: Up to 40 Weddell seals (*Leptonychotes weddellii*) will be captured, tagged, handled, annually. The study will investigate the behavioral and energetic adaptations that enable Weddell seals to forage in the Antarctic fast-ice environment. Hypotheses on general

foraging strategies, searching behavior, searching mechanics, modes of swimming, metabolic costs of foraging and foraging efficiency for different environmental conditions and prey type will be tested. Activities will occur in Antarctica.

PROJECT II — Stock Assessment: Up to 28 species of cetaceans will be taken by photo-id/photogrammery, behavioral observation, biopsy sampling and satellite tagging. The goals of this research are to study cetacean behavior through direct observation and by attaching SLTDRs and video camera/data recorders to certain species.

PROJECT III — Physiological Adaptations and Genetics Using Tissues of Marine Mammals: Import/export specimen materials from South Africa, Canada, and other locations as specimens may become available. This study of diving adaptations of marine mammals muscle, skeletal material, and other related samples will be obtained from South Africa, Canada, and possibly other locations.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 7, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–29638 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110300C]

Marine Mammals; File No. 731–1509–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Robin Baird, Ph.D., 2 Supanee Court, French's Road, Cambridge CB4 3LB, UNITED KINGDOM, has requested an amendment to Scientific Research Permit No. 731–1509–01.

DATES: Written or telefaxed comments must be received on or before December 20, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6426);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213, (562/980–4021); and

Regional Administrator, Alaska Region, Federal Building, Room 461, 709 West 9th Street, Juneau, Alaska 99802, (907/586–7235).

Comments may also be submitted by facsimile at 301/713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 731–1509–01, issued on November 24, 1999 (64 FR 67563–67564) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No.731–1509–01 authorizes the applicant to conduct radio tagging via suction-cup attachment, photo-identification, and behavioral observations of species of cetaceans in the waters of Washington, Southeast Alaska, Oregon, California, Hawaii, and the Mediterranean and Ligurian Seas in order to study diving behavior of the subject cetacean species. The authority of this permit expires on July 31, 2004.

The applicant is now forwarding three requests. (1) Increase suction cup tagging takes of Humpback whales (*Megaptera novaeangliae*) in Hawaii from 15 to 35 annually. (2) Increase harassment takes incidental to suction cup tagging of Humpback whales (*Megaptera novaeangliae*) in Hawaii from 25 to 50 annu Globicephala macrorhynchus ally. (3) Allow for biopsy sampling of cetacean species in the following waters:

(a) Mediterranean and Ligurian Seas- 30 takes for each species of Cuvier's beaked whale (*Ziphius cavirostris*), Risso's dolphin (*Grampus griseus*), Short-finned pilot whale (*Globicephala macrorhynchus),*Striped dolphin (*Stenella coeruleoalba*); 15 takes for Fin whales (*Balaenoptera physalus*); and 45 takes for Sperm whales (*Physeter macrocephalus*).

(b) Hawaii- 60 takes for each species of Killer whale (*Orcinus orca*), Short-finned pilot whale (*Globicephala macrorhynchus*), Melon-headed whale (*Peponocephala electra*), False killer whale (*Pseudorca crassidens*), Pygmy killer whale (*Feresa attenuata*), Spinner dolphin (*Stenella longirostris*), Pantropical spotted dolphin (Stenella attenuata), Striped dolphin (*Stenella coeruleoalba*), Risso's dolphin (*Grampus griseus*), Rough-toothed dolphin (*Steno bredanensis*), Bottlenose dolphin (*Tursiops truncatus*), Dwarf sperm whale (*Kogia simus*), Pygmy sperm whale (*Kogia breviceps*), Bottlenose whale (*Hyperoodon sp.*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*), Bryde's whale (*Balaenoptera edeni*); and 45 takes for each species of Sperm whale (*Physeter macrocephalus*), Sei whale (*Balaenoptera borealis*), Humpback whale (*Megaptera novaeangliae*), Fin whale (*Balaenoptera physalus*), Blue whale (*Balaenoptera musculus*), and Northern right whale (*Eubalaena glacialis*).

(c) California, Oregon, Washington and Alaska- 60 takes for each species of Killer whale (*Orcinus orca*), Short-

finned pilot whale (*Globcephala macrorhynchus*), Melon-headed whale (*Peponocephala electra*), False killer whale (*Pseudorca crassidens*), Pygmy killer whale (*Feresa attenuata*), Spinner dolphin (*Stenella longirostris*), Pantropical spotted dolphin (*Stenella attenuata*), Striped dolphin (*Stenella coeruleoalba*), Long-beaked common dolphin (*Delphinus capensis*), Short-beaked common dolphin (*Delphinus delphis*), Risso's dolphin (*Grampus griseus*), Northern right whale dolphin (*Lissodelphis borealis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Rough-toothed dolphin (*Steno bredanensis*), Bottlenose dolphin (*Tursiops truncatus*), Dall's porpoise (*Phocoenoides dalli*), Harbor porpoise (*Phocoena phocoena*), Dwarf sperm whale (*Kogia simus*), Pygmy sperm whale (*Kogia breviceps*), Bottlenose whale (*Hyperoodon sp.*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Hubbs' beaked whale (*Mesoplodon carlhubbsi*), Stejneger's beaked whale (*Mesoplodon stejnegeri*), Ginkgo-toothed whale (*Mesoplodon ginkgodens*), Blainville's beaked whale (*Mesoplodon densirostris*), Hector's beaked whale (*Mesoplodon hectori*), Gray whale (*Eschrichtius robustus*); and 45 takes for each species of Sei whale (*Balaenoptera borealis*), Humpback whale (*Megaptera novaeangliae*), Fin whale (*Balaenoptera physalus*), Blue whale (*Balaenoptera musculus*), and Northern right whale (*Eubalaena glacialis*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Dated: November 15, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–29639 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

November 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, 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.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 Bilateral Textile Memorandum of Understanding dated February 17, 2000 between the Governments of the United States and Belarus establishes a limit for the period January 1, 2001 through December 31, 2001.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

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 64 FR 71982, published on December 22, 1999).

Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2000.

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; you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622, produced or manufactured in Belarus and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of 12,190,000 square meters of which not more than 1,060,000 square meters shall be in Category 622–L.[1]

Products in the above categories exported during 2000 shall be charged to the applicable category limit for that year (see directives dated March 16, 2000 and April 7, 2000) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Belarus.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–29566 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 622–L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

November 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

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.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 import restraint limits for textile products, produced or manufactured in Korea and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

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 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2000.

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; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–223, 224–V [1], 224–O [2], 225–227, 300–326, 360–363, 369pt. [3], 400–414, 464, 469pt. [4], 600–629, 666, 669–P [5], 669pt. [6] and 670–O [7], as a group.	407,419,089 square meters equivalent.
Sublevels within Group I	
200	513,098 kilograms.
201	2,803,813 kilograms.
218	10,400,663 square meters.
219	9,470,523 square meters.
224–V	11,939,042 square meters.
300/301	3,488,883 kilograms.
313	56,856,958 square meters.
314	31,700,947 square meters.
315	19,491,172 square meters.
317/326	21,129,524 square meters.
363	1,217,639 numbers.
410	3,708,545 square meters.
604	441,725 kilograms.
607	1,248,081 kilograms.
611	4,160,266 square meters.
613/614	6,933,775 square meters.
617	5,749,961 square meters.
619/620	98,704,345 square meters.
624	10,146,989 square meters.
625/626/627/628/629.	17,750,465 square meters.
669–P	2,553,154 kilograms.
Group II	
237, 239pt. [8], 331–348, 350–352, 359–H [9], 359pt. [10], 431, 433–438, 440–448, 459–W [11], 459pt. [12], 631, 633–652, 659–H [13], 659–S [14] and 659pt. [15], as a group.	610,355,029 square meters equivalent.
Sublevels within Group II	
237	68,998 dozen.
239pt.	278,992 kilograms.
333/334/335	312,020 dozen of which not more than 159,478 dozen shall be in Category 335.
336	65,939 dozen.
338/339	1,386,755 dozen.
340	721,113 dozen of which not more than 374,425 dozen shall be in Category 340–D [16].
341	194,913 dozen.
342/642	250,788 dozen.
345	134,721 dozen.
347/348	513,098 dozen.
350	19,178 dozen.
351/651	263,459 dozen.
352	205,017 dozen.
359–H	2,953,472 kilograms.
433	14,241 dozen.
434	7,304 dozen.
435	36,785 dozen.
436	15,572 dozen.
438	62,432 dozen.
440	203,003 dozen.
442	52,623 dozen.
443	322,056 numbers.
444	57,344 numbers.
445/446	53,423 dozen.
447	91,144 dozen.
448	37,021 dozen.
459–W	100,143 kilograms.
631	346,169 dozen pairs.
633/634/635	1,376,430 dozen of which not more than 156,084 dozen shall be in Category 633 and not more than 581,677 dozen shall be in Category 635.
636	289,611 dozen.
638/639	5,358,921 dozen.
640–D [17]	3,205,306 dozen.
640–O [18]	2,671,088 dozen.
641	1,081,382 dozen of which not more than 40,846 dozen shall be in Category 641–Y [19].
643	801,140 numbers.
644	1,205,280 numbers.
645/646	3,671,642 dozen.
647/648	1,386,615 dozen.
650	28,064 dozen.
659–H	1,429,798 kilograms.
659–S	206,387 kilograms.

Category	Twelve-month restraint limit
Group III	
831, 833–838, 840–844, 847–858 and 859pt.[20], as a group.	17,494,508 square meters equivalent.
Sublevel within Group III	
835	29,429 dozen.
Group IV	
845	2,315,056 dozen.
846	822,354 dozen.
Group VI	
369–L/670–L/870[21], as a group.	81,361,297 square meters equivalent.

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[2] Category 224–O: all remaining HTS numbers in Category 224.

[3] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[7] Category 670–O: All HTS numbers except only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[8] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[9] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[10] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[11] Category 459–W: only HTS number 6505.90.4090.

[12] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[13] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[14] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[15] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

[16] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[17] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[18] Category 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[19] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[20] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[21] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 1, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for the following merged categories are listed below:

Category	Conversion factor (Square meters equivalent/category unit)
333/334/335	33.75
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.96

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29567 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

November 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, 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.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 Bilateral Textile Agreement of June 23, 2000 between the Governments of the United States and the Lao People's Democratic Republic, establishes a limit for Categories 340/640 for the period January 1, 2001 through December 31, 2001.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limit for Categories 340/640.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

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 64 FR 71982, published on December 22, 1999). Information regarding the 2001

CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2000.

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; and the Bilateral Textile Agreement of June 23, 2000 between the Governments of the United States and the Lao People's Democratic Republic, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of 184,683 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Lao People's Democratic Republic.

Products in the above categories exported during 2000 shall be charged to the applicable category limit for that year (see directive dated December 10, 1999) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29568 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

November 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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.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 import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits.

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 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2000.

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; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	2,284,529 dozen.
331/631	7,398,029 dozen pairs.
333/334	357,875 dozen of which not more than 51,377 dozen shall be in Category 333.
335	232,941 dozen.
336	847,690 dozen.
338/339	2,611,936 dozen.
340/640	1,159,852 dozen.
341/641	1,046,620 dozen.
342/642	733,210 dozen.
345	218,348 dozen.
347/348	2,568,760 dozen.
350	193,296 dozen.
351/651	799,710 dozen.
352/652	3,140,670 dozen.
359–C/659–C [1]	1,086,526 kilograms.
361	2,441,638 numbers.
369–S [2]	553,458 kilograms.
431	178,113 dozen pairs.
433	3,507 dozen.
443	42,408 numbers.
445/446	28,966 dozen.
447	8,053 dozen.
611	7,327,550 square meters.
633	47,244 dozen.
634	586,172 dozen.
635	378,360 dozen.
636	2,209,132 dozen.
638/639	2,683,169 dozen.
643	1,128,465 numbers.
645/646	930,992 dozen.
647/648	1,549,964 dozen.
649	9,395,504 dozen.
650	138,348 dozen.
659–H [3]	1,820,297 kilograms.
847	1,207,369 dozen.

Category	Twelve-month restraint limit
Group II	
200–227, 300–326, 332, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–607, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	246,949,299 square meters equivalent.
Sublevel in Group II	
604	2,588,600 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC, administrative arrangements notified to the Textiles Monitoring Body and a Memorandum of Understanding dated August 19, 1998 between the Governments of the United States and the Republic of the Philippines.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29569 Filed 11–17–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: National Defense University; National Security Education Program.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Vice President, National Defense University, announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 19, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Attn: Dr. Edmond J. Collier, Arlington, VA 22209–2248.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the National Security Education Program Office, at (703) 696–1991.

Title; Associated Form; and OMB Number: National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards; DD Form 2752; OMB Number 0704–0368. National Security Education Program (NSEP) Service Agreement Report (SAR); DD Form 2753; OMB Number 0704–0368.

Needs and Uses: The information collection requirement is necessary to obtain verification that applicable scholarship and fellowship recipients are fulfilling service obligation mandated by the National Security Education Act of 1991, Title VIII of Pub. L. 102–183, as amended.

Affected Public: U.S. individuals or households; federal government agencies.

Annual Burden Hours: 40.

Number of Respondents: 300.

Responses Per Respondent: 2.

Average Burden Per Response: 30 minutes.

Frequency: Semi-annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are recipients of undergraduate scholarships and graduate fellowship assistance from the National Security Education Program (NSEP), established by the National Security Education Act of 1991. DD Form 2752 is the Service Agreement that award recipients sign in order to acknowledge their understanding of their service obligation, and agree to the obligation. DD From 2753 is the Service Agreement Report Form on which the student provides an account of his or her work toward fulfilling the service obligation, or justifies a request for deferment. The forms supporting this information collection requirement represent the sole means of establishing a written agreement of the service obligation and progress reports toward

fulfilling this obligation between students who receive NSEP undergraduate scholarship and graduate fellowship awards, the program office and the Department.

Dated: November 14, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–29556 Filed 11–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: National Defense University; National Security Education Program, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Vice President, National Defense University announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 19, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Attn: Dr. Edmond J. Collier, Arlington, VA 22209–2248.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the National Security Education Program Office, at (703) 696–1991.

Title; Associated Form; and OMB Number: National Security Education Program (NSEP) Proposal Budget Estimate Worksheet; DD Form 2729; OMB Number 0704–0366. National Security Education Program (NSEP) Proposal Cover Sheet; DD Form 2730; OMB Number 0704–0366.

Needs and Uses: The information collection requirement is necessary to obtain and record the qualifications and budget information of universities submitting proposals for NSEP funding.

Affected Public: U.S. public and private institutions of higher education.

Annual Burden Hours: 2000.

Number of Respondents: 250.

Responses per Respondent: 1.

Average Burden per Response: 6.5 hours.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are representatives of U.S. colleges and universities who choose to submit a proposal in competition for a National Security Education Program (NSEP) Institutional Grant. The NSEP was established by the National Security Education Act of 1991. DD form 2729, National Security Education Program (NSEP) Proposal Budget Worksheet, is a single-page document in which the applicant indicates the cost associated with the proposal by four major categories. Without this form there would be no precise, standard manner for applicants to portray their budget requests. Further there would be no consistent measure by which the merit-review panelists could judge these proposals. DD Form 2730, National Security Education Program (NSEP) Proposal Cover Sheet, is a concise vehicle for transmitting proposals. This form eliminates the need for lengthy nonstandard letters of transmittal. The form also facilitates processing the proposals as all data elements necessary for processing the proposal are on this one form. Additional savings of time and money are realized by the respondents who are required to use these forms instead of unnecessarily elaborate brochures, elaborate art work, expensive paper and bindings, or other such presentations.

Dated: November 14, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–29557 Filed 11–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Design Criteria Standard for Electronic Records Management Software Applications

AGENCY: Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence DoD.

ACTION: Notice of availability.

SUMMARY: The DoD Standard, ''Design Criteria Standard for Electronic Records Management Software Applications'' is being revised. The document sets forth mandatory requirements for software applications used by Department of Defense organizations to manage their records. The current version has been endorsed, with some recommendations, by the National Archives and Records Administration (NARA) for other Federal Agency use. A draft of the revised version, which incorporates security markings and related issues, as well as the NARA recommendations, is available for review and comment.

DATES: Submit comments by January 19, 2001.

ADDRESSES: Download the document and comment form from URL: *http://jitc.fhu.disa.mil/recmgt.* Requests and comments may be e-mailed to: *matsuurs@fhu.disa.mil.*

FOR FURTHER INFORMATION CONTACT: Steve Matsuura, telephone (520) 538–5169.

Dated: November 14, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–29558 Filed 11–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of the Hunters Point Annex To Naval Station Treasure Island, Formerly Hunters Point Naval Shipyard, San Francisco, California

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, hereby announces its decision to dispose of the Hunters Point Annex to Naval Station Treasure Island, formerly Hunters Point Naval Shipyard

(Hunters Point), which is located in San Francisco, California.

Navy analyzed the impacts of the disposal and reuse of Hunters Point in an Environmental Impact Statement (EIS), as required by NEPA. The EIS analyzed two reuse alternatives and identified the Land Use Alternatives and Proposed Draft Plan, Hunters Point Shipyard, dated March 1995, as modified by the San Francisco Redevelopment Agency on January 6, 1997, (Reuse Plan) and described in the EIS as the Proposed Reuse Plan Alternative, as the Preferred Alternative. The Preferred Alternative proposed to use the Hunters Point property for industrial, commercial, residential, and educational activities and to develop parks and recreational areas.

Navy plans to dispose of Hunters Point in a manner that is consistent with the Reuse Plan and under the authority of Section 2824(a) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended by Section 2834 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160. Section 2834 of Public Law 103–160 authorizes the Secretary of the Navy to convey the Hunters Point property to the City of San Francisco or a local reuse organization approved by the City.

This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entity and the local zoning authority.

Background: Hunters Point Naval Shipyard ceased operating as a ship construction, overhaul, and repair facility in 1974. Thereafter, Navy leased the property to various private entities and, between 1986 and 1990, Navy used the facility to repair several Naval vessels.

Under the authority of the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100–526, 10 U.S.C. 2687 note (1994), the 1988 Defense Secretary's Commission on Base Realignment and Closure recommended that Navy exclude Hunters Point from its Strategic Homeport Program. This recommendation was approved by the Secretary of Defense, Frank Carlucci, and accepted by the One Hundred First Congress in 1989.

In 1990, Navy designated the property as the Hunters Point Annex to Naval Station Treasure Island, which is also located in San Francisco. Section 2824(a) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, directed Navy to lease not less than 260 acres at Hunters Point to the City of San Francisco at fair market value for a period of at least 30 years.

Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. § 2687 note (1994), the 1991 Defense Base Closure and Realignment Commission recommended closing the Hunters Point Annex to Naval Station Treasure Island. The Commission also recommended that Navy lease the entire property and permit continuing occupancy by certain Navy components. These recommendations were approved by president Bush and accepted by the One Hundred Second Congress in 1991.

The 1993 Defense Base Closure and Realignment Commission modified the 1991 Commission's recommendation by directing Navy to dispose of the Hunters Point Annex in any lawful manner, including by leasing the property. The 1993 Commission's recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in September 1993.

Later in 1993, Section 2834 of Public Law 103–160 amended Section 2824(a) of Public Law 101–510 and gave the Secretary of the Navy authority to convey Hunters Point Naval Shipyard to the City of San Francisco or a local reuse organization approved by the City instead of leasing the property. This authority is independent of the Defense Base Closure and Realignment Act of 1990, as well as the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), and its implementing regulations, the Federal Property Management Regulations, 41 CFR part 101–47.

Hunters Point Naval Shipyard is located in the City of San Francisco and covers 936 acres, of which 443 acres are submerged. The property is bounded on the north by India Basin; on the east and south by San Francisco Bay; on the southwest by South Basin; and on the northwest by the Bayview-Hunters Point area of San Francisco. This part of the City contains light and heavy industrial activities, commercial activities, residential areas, and parks and recreational areas.

The North Gate at the intersection of Innes Avenue and Donahue Street provides the primary access to Hunters Point. The South Gate, located on Crisp Avenue and currently closed except for emergencies, provided secondary access to Hunters Point. The Shipyard property is relatively flat except for a residential area located on the crest of a ridge known as Hunters Point Hill.

Hunters Point Naval Shipyard was engaged in the construction, conversion, overhaul, repair, alteration, drydocking, and outfitting of Naval vessels and service craft. The primary berthing areas for vessels are located in the eastern part of the Shipyard and consist of the quay wall, the North Pier, the South Pier, and the Regunning Pier. Two small piers, Piers B and C, are located in the northeastern part of the base, and three larger piers, Piers 1, 2 and 3, are located in the southeastern part of the base. There is a 450-ton bridge crane situated on the Regunning Pier; it is considered an identifying characteristic of Hunters Point Naval Shipyard that reflects its historic industrial use.

Two large drydocks, Drydock 2 and Drydock 3 (which replaced Drydock 1), are located in the eastern part of the base and, together with four adjacent buildings (Buildings 140, 204, 205, and 207), comprise the Hunters Point Commercial Drydock Historic District. Drydock 4, the second largest drydock on the Pacific Coast, is located in the eastern part of the base between North Pier and South Pier. Three smaller drydocks, Drydocks 5, 6, and 7, are located in the northeastern part of the base.

This Record of Decision addresses the disposal and reuse of the entire Hunters Point Naval Shipyard property. About 40 percent of the property is currently being leased. On the leased property, 58 buildings are being used for industrial activities; 12 buildings are being used for light industrial and arts and cultural activities; three buildings are being used for commercial activities; one building is being used for recreational activities; and about 60 acres in the northern part of the property are being used for law enforcement training activities.

Navy published a Notice of Intent in the **Federal Register** on June 28, 1995, announcing that Navy and the City of San Francisco would jointly prepare an Environmental Impact Statement/Environment Impact Report (EIS/EIR) under NEPA and the California Environmental Quality Act, Cal. Pub. Res. Code, §§ 21000–21177 (CEQA), that analyzed the impacts of the disposal and reuse of Hunters Point Naval Shipyard. On July 12, 1995, Navy and the City held a public scoping meeting at the Southeast Community Facility located in the Bayview-Hunters Point area of San Francisco, and the scoping period concluded on July 30, 1995.

Navy and the City distributed a Draft EIS/EIR (DEIS/DEIR) to Federal, State, and local agencies, elected officials, interested parties, and the general public on November 21, 1997, and commenced a 60-day public review and comment period. During this period, Federal, State, and local agencies,

community groups and associations, and interested persons submitted oral and written comments concerning the DEIS/DEIR. On December 10, 1997, Navy and the City held a public hearing in Building 101 at the Shipyard. On December 11, 1997, Navy and the city held another public hearing in a joint session with the San Francisco Planning Commission and the San Francisco Redevelopment Agency Commission at the War Memorial Veterans Building in San Francisco. The City also held two additional public hearings on January 13, 1998 and January 15, 1998.

After the public comment period for the DEIS/DEIR concluded, Navy and the City modified the analysis for the disposal and reuse of the Shipyard and prepared a Revised DEIS/DEIR. On November 6, 1998, Navy and the City distributed the Revised DEIS/DEIR to Federal, State, and local agencies, elected officials, interested parties, and the general public and commenced a 60-day public review and comment period, which was extended for 14 days. During this period, Federal, State, and local agencies, public interest groups, and one individual submitted written comments concerning the Revised DEIS/DEIR. On December 9, 1998, Navy and the City held a public hearing on the Revised DEIS/DEIR in Building 101 at the Shipyard. On December 17, 1998, Navy and the City held a second public hearing in a joint session with the San Francisco Planning Commission and the San Francisco Redevelopment Agency Commission at the War Memorial Veterans Building in San Francisco. After the public comment period concluded, Navy and the City decided to prepare separate final NEPA and CEQA documents.

Navy's responses to the public comments on the Revised DEIS/DEIR were incorporated in Navy's Final EIS (FEIS), which was distributed to the public on March 3, 2000, for a review period that concluded on April 4, 2000. Navy received five comments on the FEIS.

The City's responses to the public comments on the Revised DEIS/DEIR were incorporated in the City's document entitled Hunters Point Shipyard Reuse, Revised Draft Environmental Impact Report, Comments and Responses, dated January 2000, which was distributed to the public on January 24, 2000, for a review period that concluded on February 8, 2000. The San Francisco Redevelopment Agency and the San Francisco Planning Commission certified the EIR on February 8, 2000. Redevelopment Agency Resolution No. 12–2000; Planning Commission Resolution No. 11–2000.

Alternatives: NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. In the FEIS, Navy analyzed the environmental impacts of two reuse alternatives. Navy also evaluated a ''No Action'' alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

In 1991, the Mayor of San Francisco, Art Agnos, created the Mayor's Hunters Point Shipyard Citizens Advisory Committee, composed of local government agencies and residents of the City. The Advisory Committee solicited the views of residents of the Bayview-Hunters Point community and others in the City concerning the redevelopment of Hunters Point Naval Shipyard. In February 1993, the Advisory Committee set goals and proposed various uses for the Shipyard. In February 1994, after public participation, the Advisory Committee established seven guidelines to apply to the preparation of a reuse plan for the Shipyard property: Create jobs for economic vitality; support existing businesses and artists; create an appropriate mix of new businesses; balance redevelopment and environmental conservation; make the Shipyard available for transitional uses; integrate new uses of the Shipyard property into current plans for the Bayview area; and acknowledge the social and cultural history of the Hunters Point area.

Applying these guidelines, the Advisory Committee developed four preliminary reuse alternatives: Education and Arts, Industrial, Maritime, and Residential. Each alternative, except the Residential alternative, proposed a substantial amount of industrial and maritime activities. At a public workshop on June 2, 1994, the Advisory Committee selected the Education and Arts alternative as most consistent with the guidelines for redevelopment of the Shipyard. This alternative proposed a more diverse mix of land uses and businesses and had the potential to create more jobs for residents of the Bayview-Hunters Point area. The Advisory Committee developed three preliminary plans that could implement the Education and Arts alternative. These plans were evaluated through extensive public participation.

On February 14, 1995, the Advisory Committee adopted the Land Use Alternatives and Proposed Draft Plan, Hunters Point Shipyard. On March 6, 1995, the San Francisco Board of Supervisors endorsed this plan as the preferred alternative for use in the environmental analysis. Board of Supervisors Resolution No. 175–95, dated March 17, 1995.

In a letter to Navy dated January 6, 1997, the San Francisco Redevelopment Agency modified the 1995 reuse plan to take account of the San Francisco Bay Conservation and Development Commission's management program for San Francisco Bay. Property in the southeastern part of the Shipyard that had previously been designated for future redevelopment and open space was dedicated to maritime industrial use. The proposed street pattern in the southern part of the base was reconfigured to align with the boundary of the maritime industrial area. The Redevelopment Agency also changed the use of five acres of open space at the western end of Spear Avenue from passive recreational use to active recreational use.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses. This Alternative would use 96 acres for industrial activities; 85 acres for maritime industrial activities; 70 acres for research and development; 55 acres for commercial activities, including a hotel and conference center, office space, entertainment, and artists' studios; 25 acres for educational and cultural activities; 38 acres for residential development; and 124 acres for open space and recreational activities. The Preferred Alternative would use some of the existing facilities and build new facilities. It will be necessary to upgrade existing utility and infrastructure systems and improve the Shipyard's streets and public transportation network in order to support the proposed redevelopment of the property.

The Preferred Alternative would extend Spear Avenue, a northeast-southwest road on the base, to provide access to the development in the southern part of the base and to connect the eastern and western parts of the property. Innes Avenue and Crisp Avenue would provide access to the Hunters Point property. By the full build-out year of 2025, the Reuse Plan would create about 6,400 new jobs. It would build 500 live/work units and 1,300 residences composed of apartments, single-family houses, and duplexes.

The Preferred Alternative would develop about 775,000 square feet of space on 96 acres in the center of the southern part of the base for industrial

activities. These activities could include manufacturing, sales, and distribution businesses concerned with perishable products, chemical and allied products, primary and fabricated metals, and electrical and electronic equipment and parts. Wholesale services, automobile and trucking services, courier services, equipment leasing, printing and publishing activities, warehouses and distribution facilities, airport-related ground transportation services, artists' studios, and motion picture product companies could also occupy property in this part of the Shipyard.

On 85 acres along the waterfront in the southeastern part of the base, the preferred Alternative would develop about 360,000 square feet of space for maritime industrial activities. This Alternative could use the wharves and Drydock 4 in this area for maintenance and repair of vessels and could also provide rail and truck facilities, container freight stations, intermodal container transfer facilities, offices, and storage areas. The Preferred Alternative could also develop areas here for maintaining containers and container-handling equipment and for other port activities. The maritime activities would complement the industrial activities on the adjacent 96 acres.

Along Spear Avenue and in the northern part of the Shipyard, the Preferred Alternative would develop about 312,000 square feet of space on 70 acres for research and development activities. These activities could include manufacturing, sales, and distribution businesses that would serve the medical profession. Other activities could include data processing, telecommunications, artists' studios, and live/work units.

The Preferred Alternative would develop about 1,150,000 square feet of space in four areas for various purposes such as artists' studios, live/work units, recording studios, hotel and conference facilities, retail stores, are galleries, engineering research and development facilities, educational and health services, warehouses and distribution facilities, business services, real estate and insurance services, and restaurants. This development would cover about 55 acres at the Shipyard: along Spear Avenue north of the industrial activities; northeast of Drydock 4 between the maritime industrial and research and development activities; along the waterfront at the northeast end of the property; and along Innes Avenue at the north entrance to the base. The Preferred Alternative would also build about 500 apartments above commercial facilities.

In two areas covering 25 acres at the eastern end of the shipyard and in a small area along Spear Avenue north of the industrial activities, the Preferred Alternative would develop about 555,600 square feet of space for educational and training facilities, museums, theaters, galleries, specialty retail shops, restaurants, artists' studios, and conference facilities. Part of this development at the eastern end of the shipyard is located in the Hunters Point Commercial Drydock Historic District.

The Preferred Alternative would develop about 1,300 residences composed of apartments, single-family houses, and duplexes on 38 acres in the existing residential area on Hunters Point Hill and along Crisp Avenue in the northwestern part of the Shipyard. This Alternative could also develop gardens in an open space and passive recreational area adjacent to the residential area along Crisp Avenue.

The Preferred Alternative would develop open space and recreational areas along the waterfront from the western end of the base to the southern tip of the base. Most of the property in this area would be used for passive recreation and to restore wetlands. In the center of the base, this Alternative would develop open space with both active and passive recreational areas. In the eastern part of the base along the waterfront, it would develop plazas and promenades. At the northern tip of the base, the Preferred Alternative would develop open space containing hard surfaces and passive recreational areas and would restore wetlands there. Public access trails would be located along waterfront areas and provide a link to the regional Bay Trail.

Navy analyzed a second ''action'' alternative, described in the FEIS as the Reduced Development Alternative. This Alternative proposed the same land uses in the same places as those set forth in the Preferred Alternative. In the Reduced Development Alternative, however, there would be less intense development characterized by fewer and smaller buildings than proposed under the Preferred Alternative.

The Reduced Development Alternative would extend Spear Avenue to provide access to the development in the southern part of the base and to connect the eastern and western parts of the property. Innes Avenue and Crisp Avenue would provide access to the Hunters Point property. By the full build-out year of 2025, the Reduced Development Alternative would create about 2,700 new jobs. It would build 100 live/work units and 300 residences composed of apartments, single-family houses, and duplexes.

The Reduced Development Alternative would develop about 377,000 square feet of space on 96 acres in the center of the southern part of the base for industrial activities. These activities could include manufacturing, sales, and distribution businesses concerned with perishable products, chemical and allied products, primary and fabricated metals, and electrical and electronic equipment and parts. Wholesale services, automobile and trucking services, courier services, equipment leasing, printing and publishing activities, warehouses and distribution facilities, airport-related ground transportation services, artists' studios, and motion picture production companies could also occupy property in this part of the Shipyard.

On 85 acres along the waterfront in the southeastern part of the base, the Reduced Development Alternative would develop about 173,000 square feet of space for maritime industrial activities. This Alternative could use the wharves and Drydock 4 in this area for maintenance and repair of vessels and could also provide rail and truck facilities, container freight stations, intermodal container transfer facilities, offices, and storage areas. The Reduced Development Alternative could also develop areas here for maintaining containers and container-handling equipment and for other port activities. The maritime activities would complement the industrial activities on the adjacent 96 acres.

Along Spear Avenue and in the northern part of the Shipyard, the Reduced Development Alternative would develop about 100,000 square feet of space on 70 acres for research and development activities. These activities could include manufacturing, sales, and distribution businesses that would serve the medical profession. Other activities could include data processing, telecommunications, artists' studios, and live/work units.

The Reduced Development Alternative would develop about 300,000 square feet of space in four areas for various purposes such as artists' studios, live/work units, recording studios, hotel and conference facilities, retail stores, art galleries, engineering research and development facilities, educational and health services, warehouses and distribution facilities, business services, real estate and insurance services, and restaurants. This development would cover about 55 acres at the Shipyard: along Spear Avenue north of the industrial activities; northeast of Drydock 4 between the maritime industrial and research and development activities;

along the waterfront at the northeast end of the property; and along Innes Avenue at the north entrance to the base. The Reduced Development Alternative would also build about 100 apartments above commercial facilities.

In two areas covering 25 acres at the eastern end of the Shipyard and in a small area along Spear Avenue north of the industrial activities, the Reduced Development Alternative would develop about 345,000 square feet of space for educational and training facilities, museums, theaters, galleries, specialty retail shops, restaurants, artists' studios, and conference facilities. Part of this development at the eastern end of the Shipyard is located in the Hunters Point Commercial Drydock Historic District.

The Reduced Development Alternative would develop about 300 residences composed of apartments, single-family houses, and duplexes on 38 acres in the existing residential area on Hunters Point Hill and along Crisp Avenue in the northwestern part of the Shipyard. This Alternative could also develop gardens in an open space and passive recreational area adjacent to the residential area along Crisp Avenue.

The Reduced Development Alternative would develop open space and recreational areas along the waterfront from the western end of the base to the southern tip of the base. Most of the property in this area would be used for passive recreation and to restore wetlands. In the center of the base, this Alternative would develop open space with both active and passive recreational areas. In the eastern part of the base along the waterfront, it would develop plazas and promenades. At the northern tip of the base, the Reduced Development Alternative would develop open space containing hard surfaces and passive recreational areas and would restore wetlands there. Public access trails would be located along waterfront areas and provide a link to the regional Bay Trail.

Environmental Impacts: Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this Federal property. The EIS addressed impacts of the Preferred Alternative, the Reduced Development Alternative, and the ''No Action'' Alternative for each alternative's effects on transportation, traffic and circulation, air quality, noise, land use, visual resources and aesthetics, socioeconomics, hazardous materials and waste, geology and soils, water resources, utilities, public services, cultural resources, and biological resources. This Record Of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the Final EIS as the Preferred Alternative.

The Preferred Alternative would have significant impacts on transportation, traffic and circulation. The Preferred Alternative would implement a Transportation Demand Management (TDM) program that would include substantial ridesharing, use of public transportation, and nonvehicular travel modes. By the full build-out year of 2025, this Alternative would generate 21,832 average daily trips. The traffic generated by the Reuse Plan would cause substantial delays during peak commuting hours at three intersections near Hunters Point Naval Shipyard. Delays arising out of traffic congestion would also increase at two other intersections, along three freeway segments, and on 11 freeway ramps, but these delays would not be significant. Additionally, the demand for public transportation, pedestrian sidewalks, and bike paths and related accommodations would exceed the projected capacity, causing a significant impact on these services and resources. Implementation of the Preferred Alternative would also increase the number of trucks entering and leaving the Hunters Point property.

The Preferred Alternative would not have a significant impact on air quality. The traffic generated by this Alternative would increase ozone precursor emissions and PM_{10} emissions, but the increase would not result in additional violations of Federal or State ambient air quality standards. Carbon monoxide emissions would also increase at congested intersections, but the increase would not result in violations of Federal or State standards for ambient air quality. The vehicle emission analysis assumed that a TDM program would be implemented. The impact on air quality resulting from demolition, construction, and renovation activities over the 25-year build-out period would not be significant. The acquiring entity would be responsible for complying with Bay Area Air Quality Management District (BAAQMD) guidelines for controlling airborne dust during development.

The Preferred Alternative would be consistent with many of the land use and transportation objectives and policies contained in the regional air quality plan developed by BAAQMD and the Association of Bay Area Governments as well as the Air Quality Element of the City of San Francisco's Master Plan. The particular land use pattern set forth in the Reuse Plan has not yet been incorporated in the regional air quality plan, but Federal and State laws require periodic updating of this plan to reflect changing land use and transportation plans.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas such as the San Francisco Bay Area that do not meet one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR 93.153(c)(2)(xiv) and (xix). Therefore, the disposal of Hunters Point Naval Shipyard will not require Navy to conduct a conformity determination.

Navy has not operated any stationary emission sources at Hunters Point since 1974. The Reuse Plan does not provide sufficient information concerning future projects to permit evaluation of the impacts that could be associated with related stationary emission sources. Proponents of such projects must submit air permit applications to BAAQMD, and it will determine whether specific mitigation measures must be imposed as a condition of granting new permits. To reduce toxic air contaminant emissions from stationary sources, the San Francisco Redevelopment Agency has committed to requiring all potential stationary sources of toxic contaminants allowed at Hunters Point to be evaluated and permitted as one facility. New potential stationary sources would only be allowed if the estimated incremental toxic air contaminant health risk from all stationary sources at Hunters Point were consistent with BAAQMD significance criteria for an individual facility. This approach is more stringent than current BAAQMD permitting requirements.

The Preferred Alternative would have a significant noise impact on certain residences to be built on the Hunters Point property. The noise generated by the increase in traffic would exceed State and local standards for residential exposure to noise for those residences located within 100 feet of the center of Donahue Street. Although less than significant, there could also be noise impacts on the proposed live/work units located in the northeastern part of the base resulting from the proposed maritime industrial activities at Drydock

4. Noise arising out of demolition and construction activities would be governed by the City's noise ordinance.

The Preferred Alternative would not have a significant impact on land use. It would convert this industrial property into a mix of land uses that would provide additional businesses, residential areas, and open space in the Bayview-Hunters Point area. Although the intensity of the development proposed by this Alternative would be evident to local residents and businesses, the proposed land uses along the northwest boundary of the base are similar to the existing land uses on adjacent property and the proposed open space would provide a buffer. During the 25-year build-out period, new educational and cultural activities could be temporarily incompatible with industrial activities being conducted under leases in the vicinity of North Pier and Drydock 4.

Implementation of the Preferred Alternative would require the City to amend the San Francisco Master Plan by adopting this Alternative as a new Area Plan of the Master Plan or by amending some or all of the Master Plan's nine elements. While disposal of the Hunters Point property will not have an effect on California coastal resources, it will be necessary for the San Francisco Redevelopment Agency to obtain coastal development permits from the Bay Conservation and Development Commission.

About 198 acres of dry land on the base are subject to a public trust established by California law for land that was formerly tidelands or under navigable waters when California became a state. The Tidelands Trust mandates that public tidelands and submerged lands must be used for the benefit of the people of California for maritime commerce, navigation, fisheries, and recreation. The proposed industrial, research and development, educational and cultural, and residential development of property in this area may not be consistent with the Trust's restrictions. The City of San Francisco, however, could avoid this impact by defining the non-trust uses as interim uses or by entering into an agreement with the California State Lands Commission to impose public trust restrictions on non-trust lands in exchange for the removal of Tidelands Trust restrictions on Trust property.

The Preferred Alternative would not have an adverse impact on visual resources. Although the intensity of development would increase, the new facilities would be limited in height and size to be consistent with existing structures at Hunters Point. This restriction, contained in the City's document entitled Design for Development, Hunters Point Shipyard, Redevelopment Project, dated August 1997, will preserve the views of San Francisco Bay from the hilltop residential area.

The Preferred Alternative would not have an adverse impact on socioeconomics. By the year 2025, this Alternative would create about 6,400 new jobs, which would constitute about 15 percent of the jobs projected to be available in the South Bayshore area by the year 2020. These new jobs would stimulate economic growth in the community. The Preferred Alternative would increase the number of residents in the South Bayshore area by 3,900 people, which is within the population growth projected by the Association of Bay Area Governments. By the year 2025, there would be 1,800 residential units on the Hunters Point property. This would constitute about 14 percent of the projected increase in housing in the South Bayshore area by the year 2020. This Alternative would make at least 15 percent of the new residences affordable for low and moderate income households.

The Preferred Alternative would not have a significant impact on schools. By the year 2025, the Preferred Alternative would generate an increase of 714 school age children living in the South Bayshore area. This constitutes a one percent increase in the projected number of students in the San Francisco Unified School District in the year 2020.

The Preferred Alternative would not have a significant impact on the environment arising out of the use or generation of hazardous substances by the acquiring entity. Hazardous materials used and hazardous wastes generated by the Reuse Plan will be managed in accordance with Federal, State, and local laws and regulations.

Implementation of the Preferred Alternative would not have an impact on public health and safety. Navy will inform future property owners about the environmental condition of the property and may, when appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

The Preferred Alternative could have significant impacts on geology and soils. The Hunters Point property is located in a highly active seismic region and, except for the residential area on the hilltop, is built on artificial fill that has a high potential for liquefaction, densification, and differential settlement. New construction activities will be required to meet current building codes governing seismic safety. The impacts from hazards arising out of ground movement can be reduced to an insignificant level by upgrading the existing buildings to comply with current seismic safety standards. Additionally, serpentinite, a rock that underlies major parts of the hillsides and slopes at Hunters Point, contains naturally occurring chrysotile asbestos, which could become a health hazard if released and inhaled during construction-related excavation activities. The acquiring entity must comply with Federal, State and local laws and regulations governing impacts from demolition and construction activities and the transportation and disposal of materials containing asbestos.

The Preferred Alternative would not have a significant impact on water resources. Wastewater from Hunters Point is currently discharged to the City's Southeast Water Pollution Control Plant. Stormwater from Hunters Point is discharged directly into San Francisco Bay. The Plant treats discharge from the City's combined system and handles both wastewater and stormwater from the eastern part of San Francisco. During heavy rainstorms, the capacity of the combined system can be exceeded. As a result, excess flows consisting of about six percent wastewater and 94 percent stormwater are discharged into the Bay without full treatment. Although an accepted and permitted feature of the City's combined system, these excess flows can have adverse impacts on the Bay and on recreational activities at nearby Candlestick Point State Recreation Area.

The FEIS evaluated three options for the treatment of wastewater and stormwater. Under Option 1, the City would upgrade and maintain the existing Navy systems that carry wastewater and stormwater separately. Under Option 2, the City would replace the existing Navy systems with new separate wastewater and stormwater systems. Under Option 3, the City would replace the existing Navy systems with a combined system that would handle both wastewater and stormwater.

In its document entitled Hunters Point Shipyard Reuse, Revised Draft Environmental Impact Report, Comments and Responses, dated January 2000, the City certified that it would implement Option1 or Option 2 for managing wastewater and stormwater on the Hunters Point Property and eliminated Option 3. Under Option 1 and Option 2, wastewater generated by implementation of the Reuse Plan

would contribute only about one half of one percent of the total wastewater discharged to the Southeast Water Pollution Control Plant. Stormwater would not be discharged into the combined system but would continue to be discharged to the Bay. Because the discharge from Hunters Point to the Plant would be relatively small, there would not be an adverse impact on the volume and frequency of the excess flows from the City's combined system.

Stormwater must be managed in accordance with Federal, State, and local laws and regulations, and the acquiring entity will be responsible for building adequate drainage facilities. The City will build stormwater retention and treatment areas on the Hunters Point property that will improve the quality of discharges to San Francisco Bay. The required Stormwater Pollution Prevention Plan will designate the locations of these retention and treatment areas and will identify drainage patterns designed to direct flow toward these areas.

The Preferred Alternative would not have a significant impact on utilities. The projected demands for potable water and wastewater treatment would constitute a small part of the City's overall demand and would not significantly affect the capacity of the City's systems. Although the Preferred Alternative proposed to upgrade utility systems, it would not be necessary to build major new utility infrastructure to comply with current regulations and the projected demand for utilities.

The amount of solid waste generated by the Preferred Alternative would increase due to demolition, construction, and redevelopment activities but would decrease over time as the demolition and construction activities were completed. By the year 2025, this increase would constitute only about one percent of the total solid waste generated in the City.

The Preferred Alternative would not have a significant impact on public services. The proposed redevelopment of the Shipyard would increase the demand for police, fire, and emergency medical services. The distance between the Hunters Point property and local City fire stations may require the City to use the fire station at the Shipyard. Although the existing water system at the Shipyard has inadequate water pressure to meet fire fighting requirements, the Preferred Alternative proposed to upgrade the water system to satisfy these requirements.

The Preferred Alternative would not have a significant impact on cultural resources. In the course of leasing Shipyard property in 1993, Navy performed a cultural resources survey of Hunters Point Naval Shipyard pursuant to section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f (1994), and its implementing regulations, Protection of Historic Properties, 36 CFR part 800. In a letter dated April 23, 1993, Navy determined that nine structures (Drydocks 2, 3, and 4; Buildings 140, 204, 205, and 207; the seawall and wharves; and the site of the western tip of Drydock 1) qualified for listing on the National Register of Historic Places as contributors to the Hunters Point Commercial Drydock Historic District. Navy also determined that the leasing of certain property located west of this District would have no effect on the Shipyard's historic resources. In a letter dated June 16, 1993, the California State Historic Preservation Officer (SHPO) concurred with Navy's determinations.

In 1998, Navy undertook another review of the historic resources at Hunters Point in connection with the Section 106 process that accompanied consideration of disposal of the Shipyard. In a letter dated April 9, 1998, Navy determined that Drydock 4 was individually eligible for listing on the National Register of Historic Places and that only six structures (Drydock 2, Drydock 3, and Buildings 140, 204, 205, and 207) qualified for listing as contributors to the Hunters Point Commercial Drydock Historic District. In this letter, Navy set forth its new determination that the seawall and wharves and the remnants of Drydock 1 had lost their physical integrity and no longer contributed to the Historic District. In a letter dated May 29, 1998, the SHPO concurred with Navy's determinations.

Navy has completed consultation pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR part 800, with the Advisory Council on Historic Preservation and the SHPO. These consultations identified actions that Navy must take before it conveys Hunters Point Naval Shipyard to the City and actions that the City or an acquiring entity must take to avoid or mitigate adverse impacts on the structures that are eligible for listing on the National Register. These obligations were set forth in a Memorandum Of Agreement, dated January 11, 2000, among Navy, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer.

Navy will nominate Drydock 4 and the Hunters Point Commercial Drydock Historic District for listing on the National Register of Historic Places in accordance with 36 CFR 60.9. Navy completed an Historic American Engineering Record for Drydock 4, and the Department of the Interior's National Park Service accepted this documentation on November 18, 1996. Navy will also submit an Historic American Engineering Record for the Commercial Drydock Historic District to the National Park Service.

The Memorandum Of Agreement requires the San Francisco Redevelopment Agency to consult with the San Francisco Landmarks Preservation Advisory Board and the City's Planning Department, acting as the Certified Local Government, to ensure that the adaptive reuse of historic properties and adjacent new development conform to the provisions of the Hunters Point Shipyard Redevelopment Plan, dated July 1997; the City's document entitled Design for Development, Hunters Point Shipyard, Redevelopment Project, dated August 1997; and the California Historic Building Code, California Building Standards Code, Title 24, Part 8. These City documents and State laws contain requirements and procedures that encourage the preservation of historic resources by, for example, prohibiting demolition and requiring that alterations must conform with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

The Preferred Alternative would have significant impacts on biological resources. Implementation of this Alternative could reduce the habitat value of the Shipyard's wetlands that provide some of the best habitat for waterfowl and shorebirds along the western shore of the central part of San Francisco Bay. The increase in activities on this property could also result in an inadvertent take of migratory birds, nests, and eggs. Implementation of the preferred Alternative could also have a beneficial impact, because it would create four wetland areas along the Bay. These wetlands could provide additional habitat for waterfowl, shorebirds, and aquatic wildlife. In a letter dated January 22, 1998, the United States Fish And Wildlife Service concurred with Navy's determination that the disposal and reuse of Hunters Point Naval Shipyard would not adversely affect any Federally-listed or proposed threatened and endangered species.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995), requires that Navy determine whether any low income and minority populations will experience

disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of Hunters Point Naval Shipyard and subsequent reuse of the property under the two proposed alternatives. All but one of the impacts identified are mitigable, and most have an effect only on the Shipyard property itself. The one significant adverse unmitigable impact is a traffic delay on a local intersection (Third Street and Cesar Chavez Street) that is not located on the Shipyard. Low income and minority populations residing within the region would not be disproportionately affected by this localized adverse impact. Indeed, the increased employment opportunities, housing, and recreational resources generated by the Preferred Alternative would have beneficial effects.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the residential, educational, and recreational areas. The Preferred Alternative would not pose any disproportionate environmental health or safety risks to children.

Mitigation: Implementation of Navy's decision to dispose of Hunters Point Naval Shipyard does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and to comply with regulations. These actions were treated in the Final EIS as agreements or regulatory requirements rather than as mitigation. Before conveying any property at Hunters Point Naval Shipyard, Navy will nominate Drydock 4 and the Hunters Point Commercial Drydock Historic District for listing in the National Register of Historic Places. Navy completed an Historic American Engineering Record for Drydock 4, which the National Park Service accepted on November 18, 1996. Navy will also submit an Historic American Engineering Record for the Commercial Drydock Historic District to the National Park Service.

The FEIS identified and discussed those actions that will be necessary to mitigate the impacts associated with the reuse and redevelopment of Hunters Point Naval Shipyard. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the FEIS: Navy received comments on the FEIS from one Federal agency, three private organizations, and one person. The Federal agency was the United States Environmental Protection Agency. The private organizations were Golden Gate University's Environmental Law and Justice Clinic on behalf of the Southeast Alliance for Environmental Justice; Arc Ecology on behalf of the Alliance for a Clean Waterfront; and the Bayview Hunters Point Community Advocates. All of the substantive comments received concerned issues already discussed in the Final EIS. Those comments that require clarification are addressed below.

The Environmental Protection Agency commented that Navy did not adopt in the FEIS an Environmental Management System as a mitigation measure that could reduce the local community's future risk of exposure to toxins. Navy identified mitigation measures in the FEIS that would reduce all significant impacts to a less than significant level, except for the traffic delay at one intersection. Existing Federal, State, and local air, water, and solid and hazardous waste laws and regulations control the discharge and release of pollutants through permitting, reporting and monitoring requirements. These statutory and regulatory authorities adequately protect human health and the environment. The enforcement of applicable environmental laws and regulations will ensure compliance and minimize disproportionate impacts.

Navy received several comments concerning the adequacy of the discussion of Navy's Installation Restoration Program in the FEIS and its relationship to the City's proposed reuse of the Shipyard property. Navy evaluated the impacts of the proposed reuse under the assumption that Navy will meet its statutory obligations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9675q (1994), which requires protection of human health and the environment. Section 4.7.1 of the FEIS discusses Navy's obligations to protect human health and the environment and to provide information about the environmental condition of the property at conveyance. Information concerning Navy's cleanup program at Hunters Point Naval Shipyard is available at the San Francisco Main Library's Science, Technical and Government Documents Room, 100 Larkin Street, San Francisco, and at the Anna E. Waden Branch Library, 5075 Third Street, in the Bayview area of San Francisco.

Regulations Governing the Disposal Decision: Navy's decision to dispose of Hunters Point Naval Shipyard was based upon the environmental analysis in the FEIS and Section 2824(a) of Public Law 101–510, as amended by Section 2834 of Public Law 103–160. Section 2834 of Public Law 103–160 authorizes Navy to convey the Hunters Point property to the City of San Francisco or a local reuse organization approved by the City. This authority is independent of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. 2687 note (1994), as well as the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), and its implementing regulations, the Federal Property Management Regulations, 41 CFR part 101–47.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property.

Conclusion: The City has determined in its Reuse Plan that the property should be used for various purposes including industrial, commercial, residential, and educational activities and to develop parks and recreational areas. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

Although the ''No Action'' Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the location, physical characteristics, and infrastructure of Hunters Point Naval Shipyard or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the base.

The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy plans to dispose of Hunters Point Naval Shipyard in a manner that is consistent with the City of San Francisco's Reuse Plan for the property.

Dated: October 16, 2000.

Robert B. Pirie, Jr.

Assistant Secretary of the Navy (Installations And Environment).

Dated: November 14, 2000.

J.L. Roth,

LCDR, JAGC, USN, Federal Register Liaison Officer.

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DEPARTMENT OF ENERGY

[Docket No. EA–101–B]

Application to Export Electric Energy; Avista Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Avista Corporation (Avista, formerly The Washington Water Power Company) has applied to amend its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 20, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA).

On October 17, 1994, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order EA–101 authorizing Avista to export through Bonneville Power Administration's (BPA) Nelway, Washington, international transmission facilities (Presidential Permit PP–36) up to 100 MW of firm capacity and associated energy to West Kootenay Power, for the months of November, December, January and February. On May 12, 1995, Avista applied to DOE to amend the export authorization issued in Order EA–101 to: (1) Increase the export limit to 400 MW; (2) authorize exports for all months of the calendar year; (3) remove the expiration date; and (4) add BPA facilities authorized by Presidential Permit's PP–10 and PP–46 to the list of facilities that Avista may use for export. On October 23, 1995, FE issued the requested amendment in Order EA–101–A. On September 25, 2000, Avista filed an application with FE to amend Order EA–101–A to increase the authorized export limit from 400 MW to 1000 MW.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Avista request to export to Canada should be clearly marked with Docket EA–101–B. Additional copies are to be filed directly with Mr. Robert J. Lafferty, Manager, Electric Resources, Avista Corporation, P.O. Box 3727, Spokane, Washington 99220–3727 *and* R. Blair Strong, Paine, Hamblen, Coffin, Brooke and Miller, 717 W. Sprague, Suite 1200, Spokane, WA 99201–3505.

A final decision will be made on this application after DOE determines whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities as required by Section 202(e) of FPA.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–101. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–101–A proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, D.C., on November 14, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–29596 Filed 11–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–193–A]

Application to Export Electric Energy; Energy Atlantic, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Energy Atlantic, LLC (Energy Atlantic) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 20, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: On November 24, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–193 authorizing Energy Atlantic to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Joint Owners of the Highgate Project, Inc., Maine Electric Power Company, Maine Public Service Company, and Vermont Electric Transmission Company. That two-year authorization will expire on November 24, 2000.

On October 27, 2000, Energy Atlantic filed an application with FE for renewal of the export authority contained in Order No. EA–193 for a term of five years.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance

with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Energy Atlantic request to export to Canada should be clearly marked with Docket EA–193–A. Additional copies are to be filed directly with Michael E. Small, Wendy N. Reed, Wright & Talisman, P.C., 1200 G Street, NW., Suite 600, Washington, DC 20005 and Calvin D. Deschene, Director, Energy Atlantic, L.L.C., PO Box 1148, Presque Isle, Maine 04769.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–193. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–193 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity,'' from the Regulatory Info menu, and then ''Pending Proceedings'' from the options menus.

Issued in Washington, D.C., on November 14, 2000.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–29595 Filed 11–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Interstate Electric Transmission System; Electric Reliability Issues; Notice of Inquiry

AGENCY: Department of Energy.

SUMMARY: The Department of Energy (DOE) is seeking comments on whether to initiate, pursuant to section 403 of the DOE Organization Act (42 U.S.C. 7173), a rulemaking for final action to the Federal Energy Regulatory Commission (FERC) to impose mandatory electric reliability standards. This is the initial step in a process in which DOE intends to examine electric reliability issues and proposals, and the extent of Federal authority under existing law, given the transition to restructured, more competitive electricity markets. Based on the results of that examination, DOE will consider the issuance of a proposed rulemaking. Any proposed rulemaking would seek to promote and ensure the long-term reliability of the interstate electric transmission system. DOE is seeking responses to particular questions posed below, and welcomes any other comments or proposals pertinent to an electric reliability rulemaking.

DATES: Written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time January 4, 2001. DOE is requesting a signed original, a computer diskette (WordPerfect or Microsoft Word) and 3 copies of the written comments. Comments can also be filed electronically by e-mail to: *policy.energy@hq.doe.gov*, noting ''Electric Reliability Comments'' in the subject line.

ADDRESSES: Written comments should be submitted to: Office of Policy, Office of Economic, Electricity and Natural Gas Analysis, PO–21, Attention: Electric Reliability Comments, U.S. Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Conti, U.S. Department of Energy, Office of Policy, Office of Economic, Electricity and Natural Gas Analysis, Forrestal Building, PO–21, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4767, e-mail: *john.conti@hq.doe.gov*, or Lot Cooke, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, GC–76, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 586–0503, e-mail: *lot.cooke@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The 1998 Final Report of the Secretary of Energy Advisory Board's Task Force on Electric System Reliability noted:

> * * * the electricity industry is in a transition from a highly regulated industry dominated by monopoly utilities to an industry that will rely, in large part, upon competitive commercial markets at both the wholesale and retail levels. The industry is unbundling, and the old institutions for reliability are no longer sufficient. We are already in the middle of our journey toward a restructured electricity industry. However, the new policies and institutions needed to assure electric reliability are not yet in place. Until such policies and institutions are in place, substantial parts of North America will be exposed to unacceptable risks.

The complete report is available at *http://www.hr.doe.gov/seab.*

The events of the last two summers have borne out the Task Force's warnings. During the Summer of 1999 a number of regions of the country experienced blackouts and brownouts. Utilities located in other areas narrowly avoided major reliability-related problems. This past summer the California Independent System Operator declared a record number of ''Stage 2'' electricity emergencies and was often on the brink of having to implement rolling blackouts. Some businesses were forced to temporarily shut down operations and millions of people were left to wonder whether the lights would be on when they returned home from work in the evening.

The Report of the Secretary of Energy Advisory Board's Task Force, and a report prepared by the Department of Energy's Power Outage Study Team (available at *http://www.policy.energy.gov/*), offered recommendations on actions that could be taken to improve the reliability of the electric grid. Some of these recommendations focused on efforts to improve the adequacy of our electricity supply to ensure that it keeps pace with demand for power. Other recommendations attempted to address some potential problems associated with the security of the integrated bulk power grid. Both reports recommended that all users of the bulk power system be subject to mandatory reliability rules.

The electric utility industry, through a tradition of voluntary self-regulation and cooperation, has historically performed admirably in maintaining reliability. That self-regulation was accomplished under the auspices of the North American Electric Reliability Council (NERC). NERC was established in 1968 as a voluntary membership organization. NERC develops standards, guidelines, and criteria for ensuring and evaluating the electricity system's security and adequacy. NERC operates through ten regional councils and has been largely successful in maintaining a high degree of transmission grid reliability. The reliability councils have functioned without formal enforcement powers, relying on voluntary compliance.

However, in a highly competitive electricity market, voluntary self-regulation of reliability issues may not be sufficient. Utilities are under increasing pressures to cut costs and maximize the economic value of the electric transmission grid, to the possible detriment of electric reliability. In addition, in a competitive environment industry participants may use reliability concerns as a pretext for anti-competitive behavior.

NERC and other interested parties have stated that the establishment and enforcement of mandatory reliability

standards will be necessary to protect the reliability of the bulk power system in a restructured electricity industry. The Administration's proposed comprehensive electricity restructuring legislation—the Comprehensive Electricity Competition Act (CECA) (H.R.1828 and S.1047 in the U.S. House of Representatives and the U.S. Senate respectively)—includes a provision that would amend the Federal Power Act (FPA) (16 U.S.C. 791a, *et seq.*) to require FERC to approve the formation of and oversee a self-regulating reliability organization that prescribes and enforces mandatory reliability standards. Several other bills introduced in the 106th Congress included similar proposals. Although the Senate approved S. 2071, which authorizes mandatory reliability standards, on June 30, 2000, the Committee on Commerce of the House of Representatives failed to act on this or any other electric reliability-related legislation.

Because the 106th Congress is likely to adjourn without enacting legislation to improve the reliability of the electric grid, DOE is considering using its authority under section 403 of the DOE Organization Act to initiate an electric reliability rulemaking at FERC. To assist DOE in its consideration of this issue, we are requesting comments on the following questions:

1. Is the existing arrangement of voluntary compliance with industry reliability rules sufficient to ensure reliability of the bulk power transmission system? If not, why not, and has reliability been jeopardized by violations of the existing bulk power reliability standards?

2. What can FERC do under existing authorities to address reliability concerns?

3. If FERC has the authority to establish and enforce reliability standards, may FERC delegate such authority to a self-regulating reliability organization? Should it do so?

4. Are there elements in CECA, or other electric reliability legislative language, which can, with or without modification, be used in a rulemaking?

5. What should the relationship be between Regional Transmission Organizations, as advanced in FERC Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31, 089 (2000), and an Electric Reliability Organization as proposed in CECA?

6. How should the responsibilities and roles of FERC and the States be addressed in a rulemaking?

7. Recognizing the international nature of the interconnected transmission grid, how could implementation of mandatory reliability standards be coordinated with Canada and Mexico?

In addition to the above, commenters are encouraged to discuss, comment on, and make suggestions on other electric reliability issues that may be relevant to DOE's consideration of a rulemaking. Comments submitted pursuant to the Notice of Inquiry will be deemed public and will not be treated as confidential.

Issued in Washington, D.C. on November 15, 2000.

Bill Richardson,

Secretary of Energy.

[FR Doc. 00–29600 Filed 11–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–512–000]

Notice of Proposed Information Collection and Request for Comments

November 14, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before January 19, 2001.

ADDRESSES: Written comments on the proposed collection of information may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425 and by E-mail at mike.*miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Abstract: The FERC–512, ''Application for Preliminary Permit'' (OMB No. 1902–0073) is used by the Commission to implement the statutory provisions of Sections 4(f), 5 and 7 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.* & 3301–3432. The purpose of obtaining a preliminary permit is to maintain priority of the application for a license for a hydroelectric power facility while examining and surveying to prepare maps, plans, specifications and estimates; conducting engineering, economic and environmental feasibility studies; and making financial arrangements. The conditions under which the priority will be maintained are set forth in each permit. During the term of the permit, no other application for a preliminary permit or application for a license submitted by another party can be accepted. The term of a permit is three years. The information collected under the designation FERC–512 is in the form of a written application for a preliminary permit which is used by Commission staff to determine the qualifications of the applicant to hold a preliminary permit, review the proposed hydro development for feasibility and to issue a notice of the application to solicit public and agency comments. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 4.31–.33, 4.81–82.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents (1)	Annual responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
45	1	73	3,285

Estimated cost burden to respondents is $182,186; (*i.e.,* 3,285 hours divided by 2,080 hours per full time employee per year multiplied by $115,357 per year equals $182,186). The cost per respondent is $4,049.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29580 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER 363 000]

American Transmission Systems, Inc.; Notice of Filing

November 13, 2000.

Take note that on November 3, 2000, American Transmission Systems, Inc., tendered for filing proposed amendments to its Open Access Transmission Tariff designed to implement the Ohio Retail Electric Program. American Transmission Systems, Inc., requests waiver of notice to permit an effective date of January 1, 2001 for the amendments.

Copies of this filing have been served on the transmission customers of American Transmission Systems, Inc., Parties to FirstEnergy's Ohio transition plan case, and the utility commissions in Ohio and Pennsylvania.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29592 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–010]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2000.

Take notice that on November 2, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet proposed to become effective November 1, 2000:

Original Sheet No. 14R

ANR advises that the purpose of the filing is to implement new negotiated rate transactions that supplement the previously approved restructured portfolio of negotiated rate transactions with Wisconsin Public Service Corporation.

ANR states that a copy of this filing is being mailed to the affected shippers and to each of ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 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, 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/online/rims.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29584 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–563–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

November 14, 2000.

Take notice that on November 7, 2000, Chandeleur Pipe Line Company tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective December 15, 2000.

Second Revised Sheet No. 43A

Chandeleur Pipe Line Company asserts that the purpose of this filing is to comply with the Commission's order issued October 25, 2000 in Docket No. RP00–563–000.

Chandeleur is directed to remove Tariff Section 7.9(d) of its General Terms and Conditions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. 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).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29585 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–596–001]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

November 14, 2000.

Take notice that on November 6, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Sixth Revised Sheet No. 269 to be effective retroactively on September 29, 2000.

CIG states that pursuant to FERC Commission Order, dated October 27, 2000 in Docket No. RP00–596–000, this compliance filing is being made to remove incremental rate tariff language from CIG's Right of First Refusal, Section 3.1 of its General Terms and Conditions.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. 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).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29587 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–361–000]

Consumers Energy Company; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, Consumers Energy Company (Consumers), tendered for filing an executed Non-Firm Point to Point Transmission Service Agreement with Midland Cogeneration Venture Limited Partnership (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of October 25, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29590 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–365–000]

Kentucky Utilities Company; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, AmerenCIPS tendered for filing a Notice of Cancellation stating that effective as of June 12, 2000, Rate Schedule FERC No. 97, dated June 1, 1988, (Docket No. ER 88–439) filed with the Federal Energy Regulatory Commission by Central Illinois Public Service Company is to be canceled.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests must be filed on or before November 24, 2000. 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. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29594 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER–358–000]

New York State Electric & Gas Corporation; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 72 filed with FERC corresponding to an Agreement with the Municipal Board of the Village of Bath (the Village). The proposed supplement would decrease revenues by $289.27 based on the twelve month period ending December 31, 2001.

The rate filing is made pursuant to Section 2(a) through (c) of Article IV of the December 1, 1977 Facilities Agreement between NYSEG and the Village, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month period during December 31, 1999. The revised facilities charge is levied on the cost of the tap facility constructed and owned by NYSEG to connect its 34.5 kV transmission line located in the Village to the Village's Fairview Drive Substation.

NYSEG reqests an effective date of January 1, 2001.

Copies of the filing were served upon the Municipal Board of the Village of Bath and the Public Service Commission of the State of New York.

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 Rules and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or by November 24, 2000. 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. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.201(a)(1)(m) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29589 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3742–002]

Northeast Utilities Service Company; Notice of Filing

November 14, 2000.

Take notice that on November 8, 2000, Northeast Utilities Service Company (NUSCO) filed non-confidential versions of two rate schedules (the CL&P Agreement) and the WMECO Agreement) dated April 10, 2000 which were filed with the Commission on September 22, 2000 on a confidential basis.

NUSCO requests that the agreements become effective by December 1, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29577 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 696]

PacifiCorp; Notice of Authorization for Continued Project Operation

November 14, 2000.

On October 27, 1998, PacifiCorp, licensee for the American Fork Project No. 696, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 696 is located on American Fork Creek in Utah County, Utah.

The license for Project No. 696 was issued for a period ending October 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 696 is issued to PacifiCorp for a period effective November 1, 2000, through October 31, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 1, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that PacifiCorp is authorized to continue operation of the American Fork Project No. 696 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29581 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–060]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 2000.

Take notice that on November 3, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective December 1, 2000.

Third Revised Sheet No. 8B
Original Sheet No. 8B.01
Original Sheet No. 8B.02

REGT states that the purpose of this filing is to reflect the addition of a new negotiated rate arrangement involving three contracts.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29582 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–362–000]

Southern Energy Delta, L.L.C., Southern Energy Potrero, L.L.C.; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, Southern Energy Delta, L.L.C. (SE Delta), and Southern Energy Potrero, L.L.C. (SE Potrero), tendered for filing revised tariff sheets to the Must-Run Service Agreements between SE Delta, SE Potrero, and the California Independent System Operator Corporation. The revisions include changes to the: (i) Contract Service Limits, (ii) Hourly Availability Charges and Penalty Rates, and (iii) projected outage information for the generating units owned by SE Delta and SE Potrero, for the year beginning January 1, 2001, as well as corrections to certain typographical errors.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29591 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–016]

TransColorado Gas Transmission Company; Notice of Tariff Filing

November 14, 2000.

Take notice that on November 8, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixteenth Revised Sheet No. 21 and Twelfth Revised Sheet No. 22, with an effective date of November 1, 2000.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revised TransColorado's tariff to reflect the new negotiated-rate firm transportation service contracts with Sempra Energy Trading and the amended negotiated-rate contract with Retex, Inc.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29583 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–14–000]

City of Vernon, California v. California Independent System Operator Corporation; Notice of Complaint

November 14, 2000.

Take notice that on November 9, 2000, the City of Vernon, California (Vernon) tendered for filing a Complaint Requesting Fast Track processing against the California Independent System Operator Corporation (ISO). The Vernon Complaint asserts that the ISO has unreasonably delayed approval of Vernon's application to the ISO to become a Participating Transmission Owner (PTO) in the ISO transmission system, and that the ISO has thereby violated its FERC Electric Tariff and the Federal Power Act. Vernon requests that the Commission order the ISO to promptly take action to approve and implement Vernon PTO status as of January 1, 2001, or, in the alternative, for the Commission itself to take actions necessary to implement Vernon PTO status effective as of January 1, 2001.

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, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 29, 2000. 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 filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before November 29, 2000. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29579 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–364–000]

Wisconsin Electric Power Company; Notice of Filing

November 13, 2000.

Take notice that on November 3, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Allegheny Energy Supply Company, LLC.

Wisconsin Electric respectfully requests an effective date of November 1, 2000 to allow for economic transactions.

Copies of the filing have been served on Allegheny Energy Supply Company, LLC, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 24, 2000. Protests will be considered by the Commission to determine 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. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29593 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–592–001]

Wyoming Interstate Company, LTD. Notice of Tariff Compliance Filing

November 14, 2000.

Take notice that on November 6, 2000, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, Substitute Third Revised Sheet No. 61 to be effective retroactively on September 29, 2000.

WIC states that pursuant to FERC Commission Order, dated October 26, 2000, in Docket No. RP00–592–000, this compliance filing is being made to remove incremental rate tariff language from WIC's Right of First Refusal, Section 5.1 of its General Terms and Conditions.

WIC further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. 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).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29586 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–594–001]

Young Gas Storage Company, Ltd.; Notice of Tariiff Compliance Filing

November 14, 2000.

Take notice that on November 6, 2000, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 70 to be effective retroactively on September 29, 2000.

Young states that pursuant to FERC Commission Order, dated October 25, 2000, in Docket No. RP00–594–000, this compliance filing is being made to remove incremental rate tariff language from Young's Right of First Refusal, Section 3.1 of its General Terms and Conditions.

Young further states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. 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).

Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29578 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–13–000, et al.]

Bangor Hydro-Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 8, 2000.

Take notice that the following filings have been made with the Commission:

1. Bangor Hydro-Electric Company and Emera Incorporated

[Docket No. EC01–13–000]

Take notice that on November 1, 2000, Bangor Hydro-Electric Company (Bangor Hydro) and Emera Incorporated (Emera) submitted for filing an application under section 203 of the Federal Power Act (16 U.S.C. § 824b) and Part 33 of the Commission's Regulations (18 CFR 33.1), seeking the Commission's approval and related authorizations to effectuate the merger between Bangor Hydro and Emera. Under the terms of the proposed merger, Emera will obtain all of the Bangor Hydro's outstanding shares of common stock, with Bangor Hydro to continue to provide service under its name as an Emera subsidiary.

Copies of the filing were served on the Maine Public Utilities Commission, as well as the Maine Public Advocate.

Comment date: December 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Wheelabrator Shasta Energy Company, Inc. and BTA Holdings, Inc.

[Docket No. EC01–15–000]

Take notice that on November 1, 2000, Wheelabrator Shasta Energy Company Inc. (Shasta Energy) and BTA Holdings, Inc. (BTA Holdings) tendered for filing pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (1994), and Part 33 of the Commission's Regulations, 18 CFR part 33, an Application requesting Commission authorization for the proposed acquisition of the stock of Shasta Energy by BTA Holdings, which is indirectly 50% owned by each of Duke Energy Corporation and an individual.

Shasta Energy and BTA Holdings also request waiver of Section 33.2(g) of the Commission's regulations, as well as waiver of the requirement of Section 33.3 of the Commission's regulations to file Exhibits C, D, E, F and I. Shasta Energy and BTA Holdings further request privileged treatment for commercially sensitive information included in their Application.

A copy of this filing was served on the California Public Utilities Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. The AES Corporation, Inversiones Cachagua Limitada, and Mercury Cayman Co. III, Ltd.

[Docket No. EC01–17–000]

Take notice that on November 3, 2000, The AES Corporation, on behalf of two wholly-owned subsidiaries, Inversiones Cachagua Limitada and Mercury Cayman Co. III, Ltd. (collectively, Applicants), tendered for filing an application requesting all necessary authorizations under section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (1996), for Applicants to acquire a partial ownership interest in Merchant Energy Group of the Americas, Inc., a power marketer and public utility under the FPA.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Lakefield Junction, L.P., Great River Energy

[Docket No. EC01–19–000]

Take notice that on November 2, 2000, Lakefield Junction, L.P. and Great River Energy tendered for filing an application under section 203 of the Federal Power Act for approval of the transfer of all the partnership interests in Lakefield Junction, L.P. to Great River Energy. Lakefield Junction, L.P. is a limited partnership organized under the laws of the State of Delaware for the purpose of developing, owning, and operating an approximately 550 MW electric generation facility near Trimont, Minnesota.

Comment date: November 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Panda Gila River, L.P.

[Docket No. ER01–353–000]

Take notice that on November 2, 2000, Panda Gila River, L.P. (Panda Gila River), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing in Docket No. ER00–1779 pursuant to 18 CFR 35.13 and § 131.53 of the Federal Energy Regulatory Commission's Rules and Regulations, a Notice of Cancellation to become effective November 3, 2000.

Panda Gila River states that it has never entered into any wholesale electric power or energy transactions, and has never utilized its Electric Rate Schedule FERC No. 1.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Natural Gas Trading Corporation

[Docket No. ER01–352–000]

Take notice that on November 2, 2000, Natural Gas Trading Corporation (NGTC), petitioned the Commission for acceptance of NGTC Rate Schedule FERC No.1; the granting of certain blanket approvals, including the authority to sell authority at market-based rates; and the waiver of certain Commission regulations.

NGTC intends to engage in wholesale electric power and energy purchases and sales as a marketer. NGTC is not in the business of generating or transmitting electric power.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Company

[Docket No. ER01–351–000]

Take notice that on November 2, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Commonwealth Edison Company (Commonwealth Edison).

Northern Indiana has requested an effective date of October 10, 2000.

Copies of this filing have been sent to Commonwealth Edison, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER01–339–000]

Take notice that on November 2, 2000, American Electric Power Service Corporation (AEPSC), tendered for filing an executed Interconnection and Operation Agreement between Ohio Power Company and Big Sandy Peaker Plant, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of September 21, 2000.

A Copy of the filing was served upon the Public Service Commission of West Virginia and the Virginia State Corporate Commission.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. J. Aron & Company

[Docket No. ER01–340–000]

Take notice that on November 2, 2000, J. Aron & Company (J. Aron), a marketer of electric power, tendered for filing Notice of Cancellation of its Rate Schedule FERC No. 1, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Section 35.15 of the Commission's regulations, 18 CFR 35.15.

J. Aron proposes for its cancellation to be effective on January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER01–343–000]

Take notice that on November 2, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed interconnection service agreement between PJM and El Paso Merchant Energy L.P.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon El Paso Merchant Energy L.P., and the state electric utility regulatory commissions within the PJM control area.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER01–348–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Bethel, Ohio (Bethel).

Cinergy and Bethel are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER01–347–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Hamersville, Ohio (Hamersville).

Cinergy and Hamersville are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER01–346–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Kenergy, Corp. (Kenergy).

Cinergy and Kenergy are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER01–345–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Ripley, Ohio (Ripley).

Cinergy and Ripley are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Northern Indiana Public Service Company

[Docket No. ER01–344–000]

Take notice that on November 2, 2000, Northern Indiana Public Service Company (Northern Indiana), tendered a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Entergy Power Marketing Corp., (EPMC).

Northern Indiana has requested an effective date of October 10, 2000.

Copies of this filing have been sent to EPMC, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER01–350–000]

Take notice that on November 2, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Georgetown, Ohio (Georgetown).

Cinergy and Georgetown are requesting an effective date of January 1, 2001.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER01–349–000]

Take notice that on November 1, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and The Village of Blanchester, Ohio (Blanchester).

Cinergy and Blanchester are requesting an effective date of December 1, 2000.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER00–2132–003]

Take notice that on November 1, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing a compliance Interconnection and Operating Agreement with Calcasieu Power, LLC, in accordance with the Commission's order in Entergy Services, Inc., 93 FERC ¶ 61,108 (2000).

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. American Transmission Company LLC

[Docket No. ER01–366–000]

Take notice that on November 2, 2000, American Transmission Company LLC (ATCLLC), tendered for filing Generator Interconnection agreements between ATCLLC and Wisconsin Electric Power for the following generators.

ATCLLC requests an effective date of January 1, 2001.

Big Quinnesec Falls Hydro Plant
Brule Hydro Plant
Chalk Hill Hydro Plant
Concord Power Plant
Germantown Power Plant
Michigamme Hydro Plant
Oak Creek Power Plant
Paris Power Plant
Peavy Falls Hydro Plant
Pine Hydro Plant
Pleasant Prairie Power Plant
Point Beach Power Plant
Port Washington Power Plant
Presque Isle Power Plant
Twin Falls Hydro Plant
Valley Power Plant
White Rapids Hydro Plant

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. NSTAR Services Company

[Docket No. ER01–369–000]

Take notice that on November 1, 2000, ISO New England Inc., tendered for filing a Report of Compliance relating to a Special Interim Market Rule in response to the Commission's July 26, 2000 Order in this proceeding, or, in the alternative, an emergency Market Rule change under Section 205 of the Federal Power Act.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the governors and utility regulatory agencies of the six New England States.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. NSTAR Services Company

[Docket No. ER01–368–000]

Take notice that on November 1, 2000, ISO New England Inc., tendered for filing a Report of Compliance relating to Market Rule 17, Market Monitoring, Reporting and Market Power Mitigation, in response to the Commission's July 26, 2000 Order in this proceeding.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. ISO New England Inc.

[Docket No. ER01–316–000]

Take notice that on November 1, 2000, ISO New England Inc. (ISO), tendered for filing proposed rates under Section 205 of the Federal Power Act for recovery of its administrative costs for 2001. The ISO requests that an Interim Tariff be allowed to go into effect on January 1, 2001, and a Tariff to go into effect upon issuance of a final Commission order.

Copies of the transmittal letter were served upon all Participants in the New England Power Pool (NEPOOL) and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as on the utility regulatory agencies of the six New England States. Participants were also served with the whole filing

electronically and posted on the world-wide web.

Comment date: November 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29549 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1162 002

Kacie Lake Hydro, Inc., Notice of Surrender of Preliminary Permit

November 8, 2000.

Take notice that Kacie Lake Hydro, Inc., permittee for the proposed Kacie Lake Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on March 23, 1999, and would have expired on February 28, 2002. The project would have been located on an unnamed stream, near the city of Unalaska, Alaska.

The permittee filed the request on October 3, 2000, and the preliminary permit for Project No. 11620 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29588 Filed 11–17–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6902–9]

California State Nonroad Engine and Vehicle Pollution Control Standards; Notice of Within the Scope Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice Regarding Within the Scope Determinations.

SUMMARY: EPA today has determined that certain amendments to the California regulations for standards and test procedures for; utility and lawn and garden engines (ULGE Rule); heavy-duty non-road engines and vehicles (HDNR Rule); and nonroad recreational vehicles and engines (NRRV Rule), are within the scope of the previous authorizations of Federal preemption granted to California for its three nonroad rules pursuant to section 209(e) of the Act.

DATES: Any objections to the findings in this notice regarding EPA's determination that California's amendments to its regulations for test procedures for nonroad engines and vehicles are within the scope of previous authorizations must be filed by December 20, 2000. Otherwise, at the end of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

ADDRESSES: Any objections to the within the scope findings described above should be filed with Robert Doyle at the address noted below. The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, Tel. (202) 260–7549. The Dockets included in these determinations are as follows: Docket A–2000–05—ULGE Rule—Certification and Implementation Amendments; Docket A–2000–06—ULGE Rule and HDNR Rule—Military/Tactical Vehicles and Engines Exemptions Amendments; Docket A–2000–07—ULGE Rule—CO Standards Revisions Amendments; Docket A–2000–08—ULGE Rule—Snowthrowers & Ice Augers Certification Options Amendments; NRRV Rule—Speciality Vehicle CO Standards Revision Amendments.

Copies of the Decision Document for these determinations can be obtained by contacting Robert Doyle as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania, NW., Washington, DC 20460. Telephone: (202) 564–9258, FAX:(202) 565–2057, E-Mail: *Doyle.Robert@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Home Page (*http://www.epa.gov/OTAQ.* Users can find these documents by accessing the OTAQ Home Page and looking at the path entitled ''Chronological List of All OTAQ Regulations.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (*http://www.epa.gov/docs/fedrgstr/EPA–AIR/).*

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc. may occur.

II. Within the Scope Determinations for Amendments to Previously Authorized Nonroad Standards and Procedures

As noted above, CARB has requested that EPA confirm its determinations that the various amendments contained in its requests are within the scope of the authorizations previously granted by EPA for the various CARB nonroad rules. This within the scope determination concept originated in EPA's historical procedures for review of CARB onroad standards waiver requests. Early in the history of the

motor vehicle waiver program, CARB submitted to the Agency amendments to standards and regulations which had already received a waiver. Because these amendments did not fundamentally alter the standards which had received the waiver, EPA determined that the amendments did not have to be treated as a request for a new waiver, and therefore, EPA did not have to offer the opportunity for a public hearing before its review of the request (as section 209(b) requires for new waiver requests). Rather, EPA reviewed the amendments, found them to be covered by the previous waiver and issued a determination to that effect.[1] Subsequently, EPA formulated a within the scope standard of review as follows:

> If California acts to amend a previously waived standard or accompanying enforcement procedure, the change may be included within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable federal standards, does not affect the consistency of California's requirement with section 202(a) of the (Act), and raises no new issues affecting the Administrator's previous waiver determination.[2]

Although CARB has received authorizations for various sets of its nonroad standards on three separate occasions, the requests covered in this Notice are the first ones submitted by CARB for EPA to consider under a WIS approach. For these nonroad WIS requests, CARB has recommended that ''(f)or reasons of consistency and administrative efficiency, the U.S. EPA should similarly find that amendments to California nonroad regulations, for which authorizations have previously been granted, can be found to be within the scope of the existing authorizations. That is, if the criteria referenced in (the excerpt above) are satisfied as they relate to amendments of nonroad regulations, the Administrator should find the nonroad amendments to be within the scope of existing authorizations.'' CARB also noted that, for nonroad within the scope requests, the findings that CARB must make, and the analysis EPA must perform on these findings, is not significantly different than the CARB and EPA tasks in the nonroad authorization process.[3]

Regarding EPA's oversight role for nonroad WIS requests, EPA's regulations which implement section 209(e) do not specifically cover situations in which CARB requests approval for amendments to its authorized standards for nonroad engines. EPA has declared previously, however, that it would interpret section 209(b) (onroad waiver requests) and section 209(e) (nonroad authorization requests) similarly where the language is similar.[4] EPA finds that the appropriate procedure for analysis and review of nonroad amendments WIS requests would be the same basic review and analysis and review used for onroad amendments WIS requests. Accordingly, EPA will use the within the scope criteria analysis currently used in the motor vehicle waiver program for application to requests from California regarding amendments to previously authorized nonroad standards and requirements. Specifically, if California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendments may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act,[5] and raises no new issues affecting EPA's previous authorization determination.

III. The California Requests

I have determined that certain amendments to the California regulations for standards and test procedures for 1) utility and lawn and garden engines (ULGE Rule), 2) heavy-duty non-road engines and vehicles (HDNR Rule), and 3) nonroad recreational vehicles and engines (NRRV) Rule), are within the scope of the previous authorization of Federal preemption granted to California for its three nonroad rules pursuant to section 209(e) of the Act. These amendments, which are in four separate requests from California, and are described below, address various implementation and certification concerns that had arisen since California adopted these rules.

(A) CARB Nonroad Certification and Implementation Amendments

By letter dated March 27, 1996, CARB notified EPA that it has adopted numerous amendments to its ULGE Rule which were first approved by CARB at a public hearing on July 28, 1994. These amendments specifically addressed some implementation and certification concerns and also served to align CARB's Rule with the EPA Small Nonroad Engine Rule and with the utility engine practices adopted by international standards organizations. Some of these amendments which pertained to petroleum-based certification fuels were adopted expeditiously, on August 29, 1994, at the request of manufacturers who wanted to certify their test engines with the alternative Phase II fuel for 1995 calendar year production. The remaining amendments in this package were adopted by CARB on May 26, 1995.

These amendments, according to CARB, sprang from communications

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[1] The first ''within the scope'' determination resulted from EPA placing a condition on the original waiver granted for California's Assembly Line Testing on August 31, 1971. EPA stated that the ''waiver shall not prohibit California from adopting modifications of the presently proposed assembly line test and associated numerical standards where such modifications are designed to improve correlation with certification standards and test procedures or where California determines that the objectives of the assembly line teat requirement can be satisfied at reduced cost to the consumer.'' In CARB's follow-up request, EPA determined that the condition it had placed on the earlier waiver had been satisfied and thus found California's amendments to ''exist within the meaning and intent of the (earlier) waiver.'' 37 Fed. Reg. 14831 (July 25, 1972).

[2] 51 FR 12391 (April 10, 1986).

[3] *See, e.g.,* letter form James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated March 27, 1996, Docket A–2000–05, Entry II–D–1.

[4] This position was expressed in the Preamble to the publication of the final regulations implementing section 209(e) of the Act. *See* Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards, 59 Fed. Reg. 36969, 36982 (July 20, 1994).

[5] EPA has interpreted the requirement regarding whether ''California standards and accompanying enforcement procedures are not consistent with section 209'' to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers. In Order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted form state regulation. California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1). Finally, and most importantly in terms of application to nonroad within the scope requests such as these, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.

between CARB staff and the regulated industries which identified areas in both the enforcement provisions and the test procedures that needed clarification. Additionally, CARB notes, the amendments serve to modify test procedures to better reflect industry practice and to be more consistent with Federal and international procedures.

These amendments to the regulations accomplish the following:

—The definition of ''engine family'' was revised and new definitions were adopted for ''basic engine,'' ''engine model,'' and some related terms to provide manufacturers with greater flexibility in identifying engine families for certification testing.

—The regulations regarding emission control labels for these engines were revised to clarify who must attach the initial label and the supplemental label (which is required only if the initial label is obscured when installed in or on equipment), and the regulation requiring a fuel label on these engines was repealed because it was deemed unnecessary.

—The regulations regarding emission warranties were revised to make clear the warranty responsibility remains with the engine manufacturer even when the engine is labeled with the equipment manufacturer's name or trademark.

—The regulations regarding Assembly-Line Quality-Audit (ALQA) test procedures, which were originally based on the on-road program, were amended to better suit utility engine production practices, such as establishing new procedures for dealing with low-volume productions more typical to the utility engine production.

—The regulations regarding new engine compliance procedures, which allow CARB to perform emission testing on new engines at any point in the manufacturer's distribution process (including at retail stores), were based on the on-road program. The amendments to these regulations are designed to address properly the circumstances unique to utility engines.

—The regulations regarding manufacturer penalties were amended to clarify the specific liabilities of engine manufacturers and equipment manufacturers to be enjoined from the sale of noncomplying products. This will cover situations where an engine manufacturer sells an incomplete engine to an equipment manufacturer who uses inappropriate components in assembling the finished engine and thus produces a noncomplying engine.

—The regulations regarding test procedures generally serve to bring the California test procedures into closer conformity with the EPA Small Engine Rule test procedures, and also offer manufacturers some flexible options relative to alternative fueled engine certification, gasoline certification test fuels, and diesel-cycle engine family categorization. Finally, amendments were added regarding tamper resistance of adjustable engine parameters based on the corresponding regulations in the on-road program.

CARB has requested that EPA ''confirm the ARB's determination that these amendments fall within the scope of the Clean Air Act section 209(e)(2) authorization for the adoption of the Utility Regulations that was granted by (EPA) on July 5, 1995.'' [6]

(B) CARB Nonroad Military Tactical Vehicle Exemptions Amendments

By letter dated October 7, 1996, CARB notified EPA that it has adopted amendments to its ULGE Rule and HDNR Rule which were first approved by CARB at a public hearing on December 14, 1995. CARB amended Title 13, California Code of Regulations, sections 2400 and 2420 to exempt engines used in off-road military tactical vehicles and equipment from the applicable standards and regulations contained in (respectively) the ULGE Rule and the HDNR Rule. CARB took this step to align the California regulations with the corresponding Federal regulations.

Specifically, CARB exempted from the ULGE Rule and HDNR Rule any engines used in off-road military vehicles or equipment which have been exempted from EPA regulation under a ''national security exemption (NSE).'' Under the EPA rules applicable to small spark-ignition engines and large nonroad diesel engines, an NSE is available to a manufacturer of nonroad engines used in military applications.[7] CARB also exempted from the ULGE Rule and HDNR Rule any nonroad military tactical vehicles or equipment which has received a Federal certificate of conformity under the EPA Small Engine Rule. CARB took this step to cover certain vehicles or equipment which may be commercially available with Federal certification, but fall within CARB's definition of ''military tactical vehicles or equipment.'' This step, CARB states, will further ensure that the military will not be required to create a separate California fleet.

CARB has requested that EPA ''confirm the ARB's determination that the adopted provisions fall within the scope of the * * * previous authorizations that have been granted for off-road vehicles and equipment under 209(e)(2) of the CAA.'' [8]

(C) CARB Nonroad Tier I Carbon Monoxide Standard Revision for Class 1 and 2 Engines

By letter dated October 9, 1996, CARB notified EPA that it has amended its regulations setting the Tier I carbon monoxide (CO) standard for class 1 and 2 nonroad engines, by revising the standard from 300 grams per brake horsepower-hour (g\bhp-hr) to 350 g\bhp-hr. This amendment was adopted by CARB in January 1996 after CARB received a July 1995 petition from the Briggs & Stratton Corporation (B&S) asking for this change. The company, a manufacturer of small engines used primarily in lawnmowers, requested that CARB relax its original CO standard because of technical difficulties in two of its largest engine models with in-use performance when the engines of these families were calibrated to comply with the 300 g\bhp-hr standard. B&S had indicated to CARB that, in fact, because of potential warranty claim liability and damage to its corporate reputation, the company would not certify these two models under the original standard. If this occurred, CARB noted that the low cost, high volume segment of the utility engine market would not be available to California buyers.[9]

The petition requested that the CARB standard for CO for the class 1 and 2 engines be relaxed to 350 g\bhp-hr to be equivalent to the corresponding Federal standard of 350 g\bhp-hr. CARB admitted that this step would result in the CARB standard being less stringent than the Federal standard because CARB allows manufacturers to choose certification fuel which is differently formulated than the EPA-required certification fuel. CARB found, nevertheless, that its ULGE regulations overall, even with the relaxation of the Tier One CO standard, continue to be, in the aggregate, more protective of public health and welfare that the applicable Federal regulations.

CARB has requested that EPA ''confirm the ARB's determination that the adopted (CO standard) amendment falls within the scope of the previous authorization for utility engines granted

[6] Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated March 27, 1996, Docket A–2000–05, Entry II–D–1.

[7] *See*, respectively, 40 CFR § 90.908 (1998) and 40 CFR § 89.908 (1998).

[8] Letter from Michael P. Kenny, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated October 7, 1996, (''CARB request letter'') Docket A–2000–06, Entry II–D–1. This WIS request from CARB also asked EPA to confirm its determination that some amendments dealing with national security exemptions for on-road motor vehicles are within the scope of previous waivers granted under section 209(b). This particular request will be addressed in a forthcoming proceeding.

[9] Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Docket A–2000–07, Entry II–D–2, p. 4.

under section 209(e)(2) of the Federal Clean Air Act.'' [10]

(D) CARB Snowthrower & Ice Auger Optional HC and NO_X Standards, and Specialty Vehicle CO Standard Revision

By letter dated April 8, 1997, CARB notified EPA of two new sets of rule amendments. First, CARB stated that it has amended its ULGE regulations to provide manufacturers of engines used in snowthrowers and ice augers the option of not having to certify to the HC and NO_X standards. Second, CARB stated that it amended the NRRV Rule to increase the carbon monoxide standard from 300 g/bhp-hr to 350 g/bhp-hr for engines used in specialty vehicles [11] that are under 25 hp and manufactured after the effective date of the amendments through calendar year 1998.

Under the ULGE Rule as initially adopted by CARB in 1990, snowthrowers and ice augers were included in the Rule's coverage and thus were treated no differently than all other utility, lawn and garden equipment. In contrast, the EPA small engine rule, issued in 1995, exempted wintertime equipment from HC and NO_X standards. EPA noted that because snowthrowers and ice augers were clearly used only during the winter, it would not be reasonable to subject them to stringent control requirements aimed at addressing summertime ozone nonattainment problems.[12]

In March, 1996, the Tecumseh Products Company and the Toro Products Company, along with several servicing dealers, petitioned CARB to exempt snowthrowers and ice augers from HC and NO_X standards. The industry petition noted that the emissions contribution from this type of winter-time equipment was very small, and that the requested change also would harmonize California and Federal treatment of this equipment.[13] CARB granted this petition by adopting the requested changes. In its request letter to EPA, CARB acknowledged that because this step removes a mandatory standard for a class of utility equipment, it reduces the overall stringency of the CARB ULGE Rule. CARB found, nevertheless, that its ULGE regulations overall, even with the exemption of snowthrowers and ice augers from HC and NO_X standards, continue to be, in the aggregate, more protective of public health and welfare than the applicable Federal regulations.

The CARB NRRV Rule, as adopted in 1994, applies to various types of small nonroad vehicles including specialty vehicles under 25 hp. Because the engines used in the under 25 hp speciality vehicles were generally the same engines used in small utility equipment (Class 1 and 2 engines), CARB adopted emission standards for these vehicles that paralleled the emission standards for the small engines covered by the ULGE Rule. As discussed above, in response to an industry petition, in January 1996 CARB amended its ULGE Rule setting the Tier I carbon monoxide (CO) standard for class 1 and 2 nonroad engines, by revising the standard from 300 g/bhp-hr to 350 g/bhp-hr. Because the under 25 hp specialty vehicles use the Class 1 and 2 small nonroad engines now under the relaxed CO standard in the ULGE Rule, CARB amended the NRRV Rule to correspond with the revised CO standard of 350 g/bhp-hr.

CARB has requested that EPA ''confirm the ARB's determination that the adopted amendments fall within the scope of the previous authorizations that * * * EPA has granted under section 209(e)(2) of the CAA for utility engines and recreational vehicles (citations omitted).'' [14]

In the letters for these requests, CARB stated that the various amendments will not cause the California nonroad standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Regarding consistency with section 209, CARB stated that the amendments (1) apply only to nonroad engines and vehicles and not to motor vehicles or engines, (2) apply only to those nonroad engines and vehicles which are not included in the preempted categories, and (3) do not raise any concerns of inadequate leadtime or technological feasibility or impose any inconsistent certification requirements (compared to the Federal requirements). Finally, CARB stated that the amendments raise no new issues affecting the prior EPA authorization determinations.

EPA agrees with all CARB findings with regard to the provisions listed above. Thus, EPA finds that these amendments are within the scope of previous authorizations. A full explanation of EPA's decision is contained in a Decision Document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous authorizations, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by December 20, 2000, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(e) authorization determination and that EPA should reconsider its findings. Otherwise, these findings shall become final on December 20, 2000.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad engines and vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 19, 2001. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

EPA's determination that these California regulations are within the scope of prior authorizations by EPA does not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to Office of Management and Budget review.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

[10] Letter from Michael P. Kenny, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated October 9, 1996, (''CARB request letter'') Docket A–2000–07, Entry II–D–1.

[11] CARB defines ''specialty vehicles'' as ''any vehicle powered by an internal combustion engine having not less than three wheels in contact with the ground, having an unladen weight generally less than 2000 pounds, which is typically operated between 10 and 35 miles per hour. * * * Speciality vehicles are mainly used off of highways and residential streets. Applications of such vehicles include, but are not limited to, carrying passengers, hauling light loads, grounds keeping and maintenance, resort or hotel areas, airports, etc.'' 13 CCR 2411(a)(19).

[12] EPA explained that ''on a national level, ozone nonattainment is primarily a seasonal problem that occurs during warm sunny weather. Regulating HC and emissions from products used exclusively in the winter, such as snowthrowers (and ice augers), will not advance the Agency's mission to correct this seasonal problem.'' 60 FR 34582, 34591 (July 3, 1995), 40 CFR 90.103(a)(5)(1998).

[13] Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Docket A–2000–08, Entry II–D–2, p. 3, and Attachment A (Industry petition).

[14] Letter from Michael P. Kenny, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated April 8, 1997, (''CARB request letter'') Docket A–2000–08, Entry II–D–1.

Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: November 9, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–29500 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6903–3]

California State Nonroad Engine and Vehicle Pollution Control Standards; Notice of Within the Scope Determinations for Amendments to California's Small Off-Road Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice Regarding Within the Scope Determinations.

SUMMARY: The California Air Resources Board (CARB), by letter dated October 4, 1999, requested that EPA confirm CARB's finding that amendments to its Small Off-Road Engine (SORE) Regulations are within-the-scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA for CARB's original SORE Regulations in July 1995. EPA in this notice has made the requested confirmation for many of the amendments in the CARB request. EPA has also determined that other amendments in this CARB request were not within the scope of the prior authorization because these amendments are new standards, and will announce the opportunity for a public hearing on these specific amendments.

DATES: Any objections to the findings in this notice regarding EPA's determination that California's amendments to its regulations for test procedures for nonroad engines and vehicles are within the scope of previous authorizations must be filed by December 20, 2000. Otherwise, at the end of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

ADDRESSES: Any objections to the within the scope findings in this notice should be filed with Robert Doyle at the address noted below. The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The Docket for this matter is Docket A–2000–09. Copies of the Decision Document for these determinations can be obtained by contacting Robert Doyle as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–9258, FAX: (202) 565–2057, E-Mail: *Doyle.Robert@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

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Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc. may occur.

II. Amendments to the SORE Regulations

We have determined that certain amendments to the CARB SORE [1] Regulations are within the scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB's original SORE Regulations by decision of the Administrator dated July 5, 1995.[2] The SORE regulations apply to all gasoline, diesel, and other fueled utility and lawn and garden equipment engines 25 horsepower and under, with certain exceptions. Under the original authorization, the SORE regulations established two ''tiers'' of exhaust emission standards for these engines (Tier 1 from 1995 through 1998 model years, and Tier 2 for model year 1999 and beyond), as well as numerous other requirements. The amendments to the regulations, outlined in CARB's request letter,[3] and fully described CARB's submissions, accomplish the following:

- The descriptive terms ''handheld'' and nonhandheld'' have been dropped in favor of describing covered engines by engine displacement categories. The former handheld engines are now called ''less than or equal to 65 cubic centimeters (cc),'' or ''0–65cc,'' and the former nonhandheld engines are now called ''greater than 65 cc.'' CARB stated that the former categories were picked to ensure that multi-positional equipment supported solely by the operator could use the lighter (but dirtier) handheld engines, which are usually two-stroke engines. Because of manufacturer difficulty with the engine definitions, CARB chose engine displacement to define category choices.
- CARB has changed both the previously authorized Tier 2 standards and the authorized implementation dates for those standards. For the 0–65cc engines, CARB extended the Tier 1 standards for one more year, through model year 1999, so Tier 2 standards do not begin for these engines until the model year 2000. CARB also changed the Tier 2 standards, by relaxing the CO and PM standards, and changing the format of the HC and NO_X standards to allow manufacturers more flexibility. For the Over 65 cc engines, CARB extended the Tier i standards two additional years, through calendar year 2001 for most engines in this category. The extension is longer in some special cases: through 2002 for engines equal to or greater than 225cc and horizontal

[1] These amendments, among other things, renamed the regulations from the Utility, Lawn and Garden Engine Regulations (ULGE Rule) to the Small Off-Road Engine Regulations (SORE Rule).

[2] 60 FR 37440 (July 20, 1995). The CARB small engine emission regulations were then called the Utility, Lawn and Garden Engine (ULGE) regulations. The new amendments, among other things, renamed the ULGE regulations as the SORE regulations

[3] Letter from Micahel P. Kenney, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated October 4, 1999, Docket A–2000–09, entry II–B–1.

shaft engines below 225 cc, and through 2006 for vertical shaft engines below 225 cc. Additionally, manufacturers who produce more than 40,000 spark-ignited engines per year between 65 and 225cc for sale in California's extreme nonattainment areas are responsible for additional emission standards to obtain the emission reductions that would have occurred under the original CARB staff proposal for these amendments.

• For small compression ignition engines, CARB extended the coverage of the Tier 1 standards one additional year, through model year 1999. For model year 2000 and later, CARB amended the SORE regulations to implement the emission standards for small nonroad compression ignition engines in the Statement of Principles agreed upon by CARB, EPA and various industry members in 1996. The effect of these standards is a relaxation of the Tier 1 standards; the CARB staff acknowledged that it did not believe the 3.2 g/bhp-hr HC + NO_X standard was attainable in the prescribed time period of the CARB Tier 2 standards. CARB notes, however, that the amended small compression engine standards will provide good SIP benefits while also providing California/Federal harmonization of the regulations.[4]

• CARB has expanded the applicability of the SORE Rule to include speciality vehicles and golf carts; these vehicles previously were regulated under the CARB Nonroad Recreational Vehicle Rule. This change results in all engines less than 25 hp used in mobile applications now being covered by the same Rule. CARB also modified the applicability of the Rule to remove the provision that includes engines that produce a rated power greater than 25hp but are governed to produce actual power of under 25hp. CARB had found that a small number of engines of that type were built on an automotive base. The manufacturer expected the engine would not be subject to the SORE standards, but because the manufacturer's customer installed a governor downrating the engine, it became subject to these standards. CARB states that engines in this grouping will be regulated in an upcoming rulemaking to levels appropriate to their automotive origins.[5]

• Manufacturers will have the option of demonstrating compliance with the PM standard through an engineering evaluation rather than through direct testing measurement, the only method allowed in the original rule. CARB staff recommended this change after learning that a simple formula could produce a valid PM measurement value, and thus save manufacturers the cost of the expensive sampling equipment required to measure PM. CARB devised this formula based on information from an industry group showing that PM emissions from two-stroke engines will be no greater than the tested HC emissions divided by the fuel to oil ratio used in the engine.[6]

• CARB has established a program of averaging, banking and trading (ABT) of emission credits for manufacturers of these engines. Manufacturers will be able to use a corporate average to show compliance with the HC + NO_X standard. For any one engine family, the manufacturer can establish a ''Family Emission Limit (FEL)'' which will be the emission standard for that family, and the FEL can be above the standard (subject only to a set upper limit), so long as the average of all the manufacturer's families met the standard. This corporate average would weight individual engine families by power, load factor, sales and durability period. CARB notes that this credit program is designed to provide industry the flexibility to address problems such as low sales volume engines for which emission reductions are relatively costly by allowing manufacturers to focus efforts first on the higher sales volume engines. The manufacturer averaging program also includes an emission reduction credits mechanism. CARB will allow manufacturers to generate Production Emission Reduction Credits when the final HC + NO_X sample mean (from the production line testing) of an engine family is below the FEL. These credits earned can be used for certification and as a remedy for noncompliance of another engine family.[7]

• CARB amended its ''quality audit'' requirements. In the original program, manufacturers were required to test 1% of total production for compliance in end of production line tests (''green'' engines). In the new requirements, manufacturers now have an option to follow a procedure similar to the Federal ''Cumulative Sum (''Cum Sum'') procedure. Under Cum Sum, manufacturers can complete the production line testing with a small number of engines when the family is clean, and thus not have to meet the 1% of production requirement. CARB's amendments alter the Cum Sum requirements by requiring a minimum testing rate of 2 engines from each family per quarter to ensure continued sampling. Manufacturers of small volume families can minimize their tests by retaining the 1% testing number. With the exception of the quarterly minimum, CARB's program is similar to that adopted for the Federal nonhandheld program and proposed for the Federal handheld program.[8]

• CARB amended its emission warranty regulations by expanding the list of covered emission-related parts to include air filters and pressure regulators.

In an October 4, 1999 letter to EPA, CARB notified EPA of the above-described amendments to its SORE regulations and asked EPA to confirm that these amendments are within the scope of previous authorizations.[9] EPA can make such a confirmation if certain conditions are present. Specifically, if California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendments may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act,[10] and raises no new

[4] Staff Report, Docket A–2000–09, entry II–B–2, p. 32–33, Final Regulation Order—Exhaust Standards and Test Procedures, Docket A–2000–09, entry II–B–8, part VI, p. 98. CARB adopted by reference, with some modifications, 40 CFR Part 89 as that Part relates to the small compression engines.

[5] CARB Staff Report, Docket A–2000–09, entry II–B–2, pp. 10–11.

[6] CARB Staff Report, Docket A–2000–09, entry II–B–2, p. 21.

[7] CARB Staff Report, Docket A–2000–09, entry II–B–2, p. 8–9, and p. 35, Final Regulation Order, Exhaust Standards and Test Procedures, Docket A–2000–09, entry II–B–8, pp. 53–63 (emission reduction credits) and p. 110 (upper limit).

[8] CARB Staff Report, Docket A–2000–09, entry II–B–2, p. 8–9, and Final Statement of Reasons, Docket A–2000–09, entry II–B–7, p.44–45.

[9] The CARB request also included amendments which established brand new durability standards for covered engines (where before there were none). EPA has determined that these two sets of regulation amendments in this request cannot be considered within the scope of the previous authorization because these particular amendments set new and/or more stringent standards and therefore properly should be reviewed as a new authorization request. Accordingly, EPA will offer the opportunity for a public hearing on these new standards.

[10] EPA has interpreted the requirement regarding whether ''California standards and accompanying enforcement procedures are not consistent with section 209'' to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers. In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation. California's nonroad standards and enforcement

issues affecting EPA's previous authorization determination.[11]

In its request letter, CARB stated that the various amendments will not cause the California nonroad standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Regarding consistency with section 209, CARB stated that the amendments (1) apply only to nonroad engines and vehicles and not to motor vehicles or engines, (2) apply only to those nonroad engines and vehicles which are not included in the preempted categories, and (3) do not raise any concerns of inadequate leadtime or technological feasibility or impose any inconsistent certification requirements (compared to the Federal requirements). Finally, CARB stated that the amendments raise no new issues affecting the prior EPA authorization determinations.

EPA agrees with all CARB findings with regard to the provisions listed. Thus, EPA finds that these amendments are within the scope of previous authorizations. A full explanation of EPA's decision is contained in a Decision Document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous authorizations, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by December 20, 2000, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(e) authorization determination and that EPA should reconsider its findings. Otherwise, these findings shall become final on December 20, 2000.

Our decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad engines and vehicles for sale in California. For this reason, we hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by January 19, 2001. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

EPA's determination that these California regulations are within the scope of prior authorizations by EPA does not constitute a significant regulatory action under the terms of Executive Order 12866 and this action is therefore not subject to Office of Management and Budget review.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: November 9, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

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BILLING CODE 6560–50–P

procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1). Finally, and most importantly in terms of application to nonroad within the scope requests such as these, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.

[11] Decision Document for California Nonroad Engine Regulations Amendments, Dockets A–2000–05 to 08, entry V–B, .p. 28.

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6903–4]

California State Nonroad Engine and Vehicle Pollution Control Standards; Opportunity for Public Hearing and Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and request for public comment.

SUMMARY: The California Air Resources Board (CARB), by letter dated October 4, 1999, requested that EPA confirm CARB's finding that amendments to its Small Off-Road Engine (SORE) Regulations are within-the-scope of a prior authorization under section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(b), granted by EPA to CARB's original SORE Regulations in July 1995. EPA has made the requested confirmation for many of the amendments in the CARB request and published this determination in an earlier FR notice. EPA also determined that other amendments in this CARB request were not within the scope of the prior authorization because these amendments are brand new standards. For this reason, EPA is announcing the opportunity for a public hearing on these specific amendments.

DATES: EPA has tentatively scheduled a public hearing for December 8, 2000, commencing at 9:30 am. Any person who wishes to testify on the record at the hearing must notify EPA in writing by December 1, 2000 that he or she will attend the hearing to present oral testimony regarding EPA's determination. If EPA receives one or more requests to testify, this hearing will be held. If EPA does not receive any requests to testify, this hearing will be canceled. Anyone who plans to attend the hearing should contact Robert Doyle by telephone or E-Mail (number and address below) to determine if this hearing will be held. Regardless of whether or not a hearing is held, any party may submit written comments regarding EPA's determination by or before December 22, 2000.

ADDRESSES: Parties wishing to present oral testimony at the public hearing should provide written notice to John Guy, Acting Manager, Engine Compliance Programs Group, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If EPA receives a request for a public hearing, EPA will hold the public hearing in the first floor conference room at 501 3rd Street, NW., Washington, DC. Parties wishing to send written comments should provide them to Mr. Guy at the above address. EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The Air Docket is open during working hours from 8:00 a.m. to 4:00 p.m. at EPA, Air

Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The reference number for this docket is A–2000–09.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Certification and Compliance Division, (6403J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (U.S. mail), 501 3rd Street NW, Washington, DC 20001 (courier mail). Telephone: (202) 564–9258, Fax:(202) 565–2057, E-Mail: *Doyle.Robert@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

EPA makes available an electronic copy of this Notice on the Office of Transportation and Air Quality (OTAQ) homepage (http://www.epa.gov/OTAQ). Users can find this document by accessing the OTAQ homepage and looking at the path entitled ''Regulations.'' This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary website: *(http://www.epa.gov/docs/fedrgstr/EPA-AIR/).*

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

II. Background

(A) Nonroad Authorizations

Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles. Section 209(e)(2) of the Act allows the Administrator to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. On July 20, 1994, EPA promulgated a regulation that sets forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[1, 2]

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to emissions control of new engines not listed under section 209(e)(1).[3] The section 209(e) rule and its codified regulations [4] formally set forth the criteria, located in section 209(e)(2) of the Act, by which EPA must grant California authorization to enforce its new nonroad emission standards.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement that EPA cannot find ''California standards and accompanying enforcement procedures are not consistent with section 209'' to mean that California standards and accompanying enforcement procedures must be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[5] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.[6] California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. As previous decisions granting waivers of Federal preemption for motor vehicles have explained, State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.[7]

With regard to enforcement procedures accompanying standards, EPA must grant the requested authorization unless it finds that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 213(a), or unless the Federal and California certification test procedures are inconsistent.[8]

Once California has received an authorization for its standards and enforcement procedures for a certain group or class of nonroad equipment engines or vehicles, it may adopt other conditions precedent to the initial retail sale, titling or registration of these engines or vehicles without the necessity of receiving an additional authorization.[9]

If California acts to amend a previously authorized standard or accompanying enforcement procedure, the amendment may be considered within the scope of a previously granted authorization provided that it does not undermine California's determination that its standards in the aggregate are as protective of public health and welfare as applicable Federal standards, does not affect the consistency with section 209 of the Act, and raises no new issues affecting EPA's previous authorization determination.[10]

(B) The SORE Amendments Request

EPA granted California authorization for its SORE Rule by decision of the Administrator dated July 5, 1995.[11] The

[1, 2] *See* 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR Part 85, Subpart Q, 85.1601–85.1606.

[3] As discussed above, states are permanently preempted from adopting or enforcing standards relating to the control of emissions from new engines listed in section 209(E)(1).

[4] *See* 40 CFR Part 85, Subpart Q, 85.1605.

[5] *See* FR 36969, 36983 (July 20, 1994).

[6] Setion 209(e)(1) of the Act has been implemented, *See* 40 CFR Pt. 85, Subpart Q 85.1602, 85.1603.

[7] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. *See, e.g.,* 43 Fed. Reg. 32182 (July 25, 1978).

[8] *See, e.g., Motor and Equipment Manufacturers Association, Inc.* v. *EPA*, 627 F.2d 1095, 1111–14 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 952 (1980) (*MEMA I*); 43 Fed. Reg. 25729 (June 14, 1978).

While inconsistency with section 202(a) includes technological feasibility, lead time, and cost, these aspects are typically relevant only with regard to standards. The aspect of consistency with 202(a) which is of primary applicability to enforcement procedures (especially test procedures) is test procedure consistency.

[9] *See* 43 FR 36679, 36680 (August 18, 1978).

[10] Decision Document for California Nonroad Engine Regulations Amendments, Dockets A–2000–05 to 08, entry V–B, p.28.

[11] 60 FR 37440 (July 20, 1995). The CARB small engine emission regulations were then called the

SORE Rule, which applies to all gasoline, diesel, and other fueled utility and lawn and garden equipment engines 25 horsepower and under, with certain exceptions established two ''tiers'' of exhaust emission standards for these engines (Tier 1 from 1995 through 1998 model years, and Tier 2 for model year 1999 and beyond), as well as numerous other requirements. By letter dated October 4, 1999, CARB notified EPA that it had adopted numerous amendments to its SORE Regulations which were first approved at a public hearing on March 26, 1998. These amendments are the product of CARB's continuing reviews of industry efforts to comply with the requirements of the CARB nonroad program. The Board directed the CARB staff to review the industry progress in developing the technology required to comply with the Tier 2 standards, and to consider issues raised by the industry in this process. The staff recommended to the Board that the SORE regulations ''be modified to reflect the realities of the small engine market and the technological capabilities of the industry.'' [12] These recommended amendments which CARB adopted consequently reduce compliance burdens on manufacturers while also ''preserving most of the emission reductions—including most reductions in excess of comparable federal program—that U.S.E.P.A. previously authorized.'' [13]

In its request letter, CARB asked EPA to confirm the CARB determination that the amendments to the SORE regulations set forth in its request package are within the scope of the 209(e) authorization of the original authorization granted by EPA for the SORE Rule in July 1995. EPA has made such a determination for most of the regulation amendments included in the CARB request.[14] EPA also has determined, on the other hand, that one set of regulation amendments in this request cannot be considered within the scope of the previous authorization because these particular amendments set brand new, more stringent standards and therefore properly should be reviewed as a new authorization request. These amendments set useful life standards for covered engines (where before there were none). Accordingly, EPA announces this opportunity for a public hearing on these new standards.

III. Procedures for Public Participation

Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material with John Guy Doyle at the address listed above no later than December 20, 2000. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until December 22, 2000. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at EPA Air Docket, in Docket No. A–2000–09.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: November 9, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

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Utility, Lawn and Garden Engine (ULGE) regulations. The new amendments, among other things, renamed the ULGE regulations as the SORE regulations.

[12] CARB Notice of Public Hearing with attached Staff Report, Docket A–2000–09, entry II-B–2, p. 2.

[13] Letter from CARB to EPA requesting within the scope confirmation for amendments to SORE Rule, dated October 4, 1999, Docket A–2000–09, entry II-B–1, p.3.

[14] Decision Document for California Nonroad Engine Regulations Amendments, Dockets A–2000–05 to 08, entry V–B.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6904–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that The Research Strategies Advisory Committee (RSAC) of the US EPA Science Advisory Board (SAB), will meet on December 12 and 13, 2000 at the One Washington Circle Hotel located at One Washington Circle, NW, Washington, D.C. The meeting will begin by 8:30 a.m. and adjourn no later than 5:00 p.m. Eastern Standard time on both days. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting—The purpose of the meeting is to discuss the FY 2002 Agency Budget Process and Schedule as a prelude to the Committee's formal review of the Science and Technology (S&T) portion of that budget in February. The Committee will be briefed on the Agency's Science Plan and Inventory, and it will consider how to conduct the second phase of its review of the implementation of EPA's Peer Review Process. The Committee will also spend part of the meeting planning its activities for the next year.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. John ''Jack'' R. Fowle III, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4547; FAX (202) 501–0323; or via e-mail at *fowle.jack@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Fowle no later than noon Eastern Standard Time on December 7, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting 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. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—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) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 9, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–29644 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6904–7]

Draft Benchmark Dose Technical Guidance Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of Peer-Review Workshop and Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific peer review, will organize, convene, and conduct an external peer-review workshop to review the draft document titled: ''Benchmark Dose Technical Guidance Document'' (EPA/630/R–00/001). The EPA is also announcing a 30-day public comment period for the draft document. The document was prepared by an EPA Risk Assessment Forum Technical Panel. The Technical Panel will consider the peer-review and public comment submissions in finalizing the document.

DATES: The peer-review workshop will begin on Thursday, December 7, 2000, at 8:30 a.m. and end at 5:00 p.m., then reconvene Friday, December 8, 2000, from 8:00 a.m. to 1:00 p.m. Members of the public may attend as observers, and there will be a limited time for comments from the public. The 30-day public comment period begins November 20, 2000, and ends December 20, 2000.

ADDRESSES: The external peer-review workshop will be held at the Holiday Inn Capital, 550 C Street SW, Washington DC 20024. To attend the workshop register by November 30, 2000 by calling ERG at (781) 674–7374 or send a facsimile to (781) 674–2906. You may also register on the Internet at *http://www.erg.com/conferences/index.htm*, or by E-mail at confmail@erg.com. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. Please let ERG know if you wish to make comments.

The draft ''Benchmark Dose Technical Guidance Document'' is available primarily via the Internet at *http://www.epa.gov/ncea/bnchmrk/bmds—peer.htm.* A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title, draft ''Benchmark Dose Technical Guidance Document.'' Copies are not available from ERG. Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW, 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. Comments should be in writing and must be postmarked by December 20, 2000. Please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be emailed to: nceadc.comment@epa.gov.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact ERG, 110 Hartwell Avenue, Lexington, Massachusetts 02173; telephone: (781) 674–7374; facsimile: (781) 674–2906.

For information on the public comment period, contact Marilyn Brower, Risk Assessment Forum Staff; telephone: 202–564–3363; facsimile: 202–565–0062; or email: brower.marilyn@epa.gov.

SUPPLEMENTARY INFORMATION: The U.S. EPA conducts risk assessments for an array of health effects that may result from exposure to environmental agents and that require an analysis of the relationship between exposure and health-related outcomes. The dose-response assessment can be approached as a two-step process, the first being the definition of a point of departure (POD) and the second extrapolation from the POD to low environmentally-relevant exposure levels. The benchmark dose (BMD) approach provides a more quantitative alternative to the first step in the dose-response assessment than the current no-observed-adverse-effect-

level/lowest-observed-adverse-effect-level (NOAEL/LOAEL) process for noncancer health effects and can be applied to determining the POD proposed for cancer endpoints (EPA, 1996). As the Agency moves toward harmonization of approaches for cancer and noncancer risk assessment, the dichotomy between cancer and noncancer health effects is being replaced by consideration of mode of action and whether the effects of concern are likely to be linear or nonlinear at low doses. Thus, the purpose of this document is to provide guidance for the Agency on the application of the BMD approach in determining the POD, whether a linear or nonlinear low dose extrapolation is used.

The document addresses a number of issues that must be resolved in order to apply the BMD approach for dose-response assessment in a consistent manner. These issues include: (1) Determination of appropriate studies and endpoints on which to base BMD calculations; (2) selection of the benchmark response (BMR) value; (3) choice of the model to use in computing the BMD; (4) details surrounding computation of the confidence limit for the BMD (BMDL); and (5) reporting requirements for BMD and BMDL computation.

Since the methods for BMD computation require appropriate software, another purpose of this document is to provide enough information about preferred computational algorithms to allow users to make an informed choice in the selection of that software. The document does not advocate use of any particular software package, although it is recommended that software with well documented algorithms, such as the Agency's BMD software (BMDS) package, be used. Nor is this guidance intended to document any particular software package, although it will present examples for illustrative purposes that use the Agency's BMDS package. It is also expected that this guidance will inform the design of studies for the computation of BMDs and dose-response analysis, though this will not be covered explicitly. The terminology used in the document is consistent with the EPA's BMDS. This software is available on the Internet at *http://www.epa.gov/ncea/bmds.htm.*

The Risk Assessment Forum has been active in promoting research and discussion on BMD issues since 1990. In 1993 the Risk Assessment Forum sponsored a colloquium on the applications of BMD methods to noncancer risk assessment. The focus of this colloquium was to review a Forum draft report that outlined the techniques and presented the major questions and decisions involved in applying the BMD method. Following this a technical panel published a background document on the use of BMD in health risk assessment (EPA/630/R–94/007). In the ensuing years the Forum sponsored several workshops and symposia on the BMD approach, including a 1996 external peer review on an earlier draft of the document presently undergoing review. Following this external peer review, the Technical Panel will consider reviewers' and public comments in finalizing the document.

This document is intended to be updated as new information becomes available that would suggest approaches and default options alternative or additional to those indicated here and should not be viewed as precluding additional research on modified or alternative approaches that will improve quantitative risk assessment.

Dated: November 9, 2000.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 00–29648 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6902–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h), CHEMCENTRAL Warehouse Fire CERCLA Site, Kent, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendment and Reauthorization Act (''CERCLA''), notice is hereby given of a proposed settlement to resolve a claim against CHEMCENTRAL Corporation. The proposed settlement concerns the federal government's past response costs at the CHEMCENTRAL Warehouse Fire CERCLA Site, Kent, Washington. The settlement requires the settling party, CHEMCENTRAL Corporation, to pay $24,066.34 to the Hazardous Substance Superfund. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region 10, office at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Mary Shillcutt, Regional Hearing Clerk, EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–2429. Comments should reference the ''CHEMCENTRAL Warehouse Fire CERCLA Site'' and EPA Docket No. CERCLA–10–2001–0006 and should be addressed to Ms. Shillcutt at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer G. MacDonald, Assistant Regional Counsel, EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–8311.

Dated: November 8, 2000.

Charles E. Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–29357 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51956; FRL–6754–1]

Certain New Chemicals; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA is issuing this notice to correct the Test Marketing Exemption T–00–0006.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any 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 copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' 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 OPPTS–51956. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, 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 TSCA NonConfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the center is (202) 260–7099.

II. What Does This Correction Do?

EPA issued a notice in the **Federal Register** of October 17, 2000, (65 FR 61326) (FRL–6749–3) in which incorrectly provided information on Test Marketing Exemption T–00–0006, as an ingredient in a new human antipersoirant formulation. This document corrects the TME as follows:

In FR Doc. 00–26640, at page 61328, the entry to Table II. in the 5th column, the word ''antipersoiant'' is corrected to read ''antiperspirant''.

List of Subjects

Environmental Protection, Chemicals, Premanufacturer notices.

Dated: November 9, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–29649 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6904–5]

Public Water System Supervision Program Revision for the State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State of South Dakota has revised its Public Water System Supervision (PWSS) primacy program by adopting regulations for the Consumer Confidence Report Rule that correspond to 40 CFR part 141, Subpart O. Having determined that these revisions meet all pertinent requirements in the Safe Drinking Water Act, 42 U.S.C. 300f et seq., and EPA's implementing regulations at 40 CFR parts 141 and 142, the EPA approves them.

Today's approval action does not extend to public water systems in Indian Country as that term is defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by December 20, 2000. Please see Supplementary Information, Item C for information on submitting comments and requesting a hearing. If no hearing is requested or granted, then this action shall become effective December 20, 2000. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the Regional Administrator issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: William P. Yellowtail, Regional Administrator, c/o Linda Himmelbauer (8P–W–MS), U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466.

[Reviewing Documents]

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region 8, Municipal Systems Unit, 999 18th Street (4th floor), Denver, Colorado 80202–2466; (2) South Dakota Department of Environment and Natural Resources, Drinking Water Program, 523 East Capital Avenue, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Linda Himmelbauer, Municipal Systems Unit, EPA Region 8 (8P-W-MS), 999 18th Street, Suite 300, Denver, Colorado 80202–2466, telephone 303–312–6263.

SUPPLEMENTARY INFORMATION: Effective January 9, 1984, EPA approved South Dakota's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR part 142 (see 48 FR 55173.) The South Dakota Department of Environment and Natural Resources (DENR) administers South Dakota's PWSS program.

A. Why are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the National Primary Drinking Water Regulations (NPDWRs) at 40 CFR part 141. (40 CFR 142.10(a).) Changes to state programs may be necessary as federal primacy requirements change, as states must adopt all new and revised NPDWRs in order to retain primacy. (40 CFR 142.12(a).)

B. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in South Dakota?

South Dakota is not authorized to carry out its Public Water System Supervision program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian Reservations located within the State of South Dakota:

a. Cheyenne River Indian Reservation.
b. Crow Creek Indian Reservation.
c. Flandreau Indian Reservation.
d. Lower Brule Indian Reservation.
e. Pine Ridge Indian Reservation.
f. Rosebud Indian Reservation.
g. Standing Rock Indian Reservation.
h. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. In a forthcoming **Federal Register** notice, EPA will respond to comments and more specifically identify Indian

country areas in the State of South Dakota.

C. Requesting a Hearing and Submitting Written Comments

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of South Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of South Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: November 7, 2000.

Jack W. McGraw,

Acting Regional Administrator, EPA, Region 8.

[FR Doc. 00–29646 Filed 11–17–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form because of low usage: OF 129, Individual Property Record Card

DATES: Effective November 20, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: October 20, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–29616 Filed 11–17–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC), Family and Intimate Violence Prevention Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 12 p.m.–4 p.m., November 28, 2000.

Place: The Hyatt Regency Atlanta, 265 Peachtree Street, N.E., Atlanta, Georgia 30303

Status: Open to the public, limited only by the space available.

Purpose: To advise and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence and sexual assault. The Subcommittee will make recommendations regarding policies, strategies, objectives and priorities.

Matters to be Discussed: The Subcommittee will review current and planned family and intimate violence prevention program initiatives and activities.

Agenda items are subject to change as priorities dictate.

This notice is published less than 15 days prior to the meeting due to administrative delay.

Contact Person for More Information: Ileana Arias, Ph.D., Team Leader, Family and Intimate Violence Prevention Team, DVP, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–4410.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 15, 2000.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–29719 Filed 11–16–00; 12:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control (ACIPC), Science and Program Review Subcommittee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal Advisory committee meetings.

Name: ACIPC Science and Program Review Subcommittee.

Time and Date: 1:30 p.m.–5 p.m., November 28, 2000.

Place: The Hyatt Regency Atlanta, 26 Peachtree Street, N.E., Atlanta, Georgia 30303

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of NCIPC programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: The Subcommittee will discuss the national violent death reporting system, NCIPC programmatic reviews, cooperative agreement funding for fiscal year 2000, and the external peer review of intramural research.

Agenda items are subject to change as priorities dictate.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 8:30 a.m.–3:30 p.m., November 29, 2000.

Place: The Hyatt Regency Atlanta, 26 Peachtree Street, N.E., Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, the Director, CDC, and Director, National Center for Injury Prevention and Control (NCIPC) regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Following the Acting Director's update, which will include an introduction of the new NCIPC Director, NCIPC's Division of Violence Prevention will give an overview of violence against women programs. The Committee will also discuss reports from the November 28, 2000, meetings of the Subcommittee on Family and Intimate Violence Prevention and Subcommittee on Science and Program Review.

This notice is published less than 15 days prior to the meeting due to administrative delay.

Contact Person for More Information: Mr. Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 15, 2000.

Carolyn J. Russell,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–29720 Filed 11–16–00; 12:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee, Biological Response Modifiers Advisory Committee, Blood Products Advisory Committee, Transmissible Spongiform Encephalopathies Advisory Committee, and the Vaccines and Related Biological Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through January 31, 2002.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae should be sent to the addresses below.

FOR FURTHER INFORMATION CONTACT: Regarding nominations, except for consumer representatives: Nancy T. Cherry, Scientific Advisors and Consultants Staff, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314.

Regarding nominations for consumer representatives: Maureen A. Hess, Office of Consumer Affairs (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4421.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members with appropriate expertise for vacancies listed below.

1. *Allergenic Products Advisory Committee:* Three vacancies occurring August 31, 2001; immunology, pediatrics, internal medicine, biochemistry, statistics, and related scientific fields.

2. *Biological Response Modifiers Advisory Committee:* Five vacancies occurring March 31, 2001; biological response modifiers, immunology, virology, molecular biology, rDNA technology, infectious diseases, viral oncology, statistics, and cellular kinetics.

3. *Blood Products Advisory Committee:* Nine vacancies occurring September 30, 2001; clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, and other related scientific fields.

4. *Transmissible Spongiform Encephalopathies Advisory Committee:* Three vacancies occurring January 31, 2002; clinical administrative medicine, hematology, virology, neurology, infectious diseases, immunology, blood banking, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related professions.

5. *Vaccines and Related Biological Products Advisory Committee:* Three vacancies occurring January 31, 2002; immunology, molecular biology, rDNA, virology, bacteriology, epidemiology, biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, and biochemistry.

Functions

Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

Biological Response Modifiers Advisory Committee

Reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in

the prevention and treatment of a broad spectrum of human diseases.

Blood Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases.

Transmissible Spongiform Encephalopathies Advisory Committee

Reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

Vaccines and Related Biological Products Advisory Committee

Reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

Qualifications

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The particular needs at this time for each committee are shown above. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Consumer Representatives

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through procedures that include use of a consortium of consumer organizations that has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vitae of each nominee, current address and telephone numbers, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: November 7, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–29536 Filed 11–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0218]

Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol'' dated October 2000. The guidance document provides information on the revised release limits to be used by the Center for Biologics Evaluation and Research (CBER) for its evaluation of standardized dust mite and grass allergen vaccines submitted to CBER for lot release. The establishment of suitable potency limits for standardized allergen vaccines submitted to CBER for lot release is necessary to help ensure the safety, purity, and potency of these products. The guidance document announced in this notice finalizes the draft guidance entitled ''Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol'' that was announced in the **Federal Register** on February 15, 2000.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of ''Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol'' dated November 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled ''Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol'' November July 2000. The guidance document provides information to FDA reviewers regarding broader relative potency limits for CBER evaluation of standardized dust mite and grass allergen vaccines submitted to CBER for lot release. Issues addressed in the guidance document include, but are not limited to, the following: (1) Diagnostic equivalence, (2) theraputic equivalence, (3) safety equivalence, (4) lot-to-lot variation in allergen vaccine potency, and (5) current and broadened CBER release limits for standardized dust mite and grass allergen vaccines submitted to CBER for lot release. The guidance document announced in this notice finalizes the draft guidance entitled, ''Guidance for Reviewers: Potency Limits for Standardized Dust Mite and Grass Allergen Vaccines: A Revised Protocol'' that was announced in the **Federal Register** on February 15, 2000 (65 FR 7557).

This guidance document represents the agency's current thinking with regard to the potency limits for standardized dust mite and grass allergen vaccines. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: October 13, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29537 Filed 11–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–3010]

''Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts'' dated November 2000. The guidance document provides information on developing stability protocols for standardized grass pollen extracts. The development of suitable stability studies is necessary to determine the shelf life of standardized grass pollen extracts to help ensure the safety, purity, and potency of these products. The guidance document announced in this notice finalizes the draft guidance entitled ''Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts'' that was announced in the **Federal Register** of August 25, 1997.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts'' dated November 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts'' dated November 2000. The guidance document is intended to provide information to manufacturers regarding stability studies on grass pollen extracts. Such stability studies are used to determine the shelf life of the product. This guidance document does not, however, change lot release criteria for these products. Issues addressed in the guidance document include, but are not limited to: (1) Current lot release criteria, (2) lot release versus stability protocol, (3) modified stability protocol, (4) retesting, (5) dealing with test failure, and (6) extension of dating. The guidance document announced in this notice finalizes the draft guidance entitled ''Guidance for Industry on Testing Limits in Stability Protocols for Standardized Grass Pollen Extracts'' that was announced in the **Federal Register** of August 25, 1997 (62 FR 44975).

This guidance document represents the agency's current thinking with regard to the testing limits in stability protocols for standardized grass pollen extract. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two

copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: November 6, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–29535 Filed 11–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Year 2000 Community Health Center and National Health Service Corps User/Visit Survey (OMB No. 0915–0185)—Reinstatement, With Change

The purpose of this study is to conduct a sample survey which has three components: (1) A pilot study, including an evaluation of both retrospective and prospective sampling methodologies; (2) a personal interview survey of Community Health Center (CHC) and National Health Service Corps (NHSC) site users; and (3) a record-based study of visits to CHCs and NHSC sites. CHCs and NHSC sites serve predominantly poor minority medically underserved populations. The proposed user and visit survey will collect in-depth information about CHC and NHSC site users, their health status, the reasons they seek care, their diagnoses, and the services utilized in a medical encounter.

The Year 2000 User/Visit Survey was developed using similar questionnaire methodology from the 1995 User/Visit Survey in conjunction with a contractor and will allow longitudinal comparisons for CHCs with the 1995 version of the survey data, including monitoring of process outcomes over time. The Year 2000 User/Visit Survey is the first year that NHSC non-grantee, freestanding sites will be surveyed.

The estimated response burden for the pilot test is as follows:

Form	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
Site Induction	10 (sites)	1	10	1	10
Site Sampling Methods: Retrospective & Prospective.	10 (sites)	1	10	1.5	15
User Survey Tracing Procedures	20 users at 10 sites	1	200	.5	100
User Survey	3 users at 10 sites	1	30	2.25	67.5
Visit Survey	10 (sites)	30	300	.5	150
Total	260		550		342.5

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 13, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–29539 Filed 11–17–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are 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: Substance Abuse Prevention and Treatment (SAPT) Block Grant Application Guidance and Instructions, FY 2002—2004 (OMB No. 0930–0080, Revision)—Sections 1921 through 1935 of the Public Health Service Act (U.S.C. 300x–21 to 300x–35)

provide for annual allotments to assist States to plan, carry out, and evaluate activities to prevent and treat substance abuse and for related activities. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the federal fiscal year 2002–2004 SAPT block grant application cycles, the Substance Abuse and Mental Health Services Administration (SAMHSA) will provide States with revised application guidance and instructions to implement changes made by Public Law 106–310, signed by the President on October 17. Revisions to the previously-approved application resulting from the new SAMHSA authorizing legislation reflect the following changes: (1) Section 1922(a) under which States were required to use 35% of the funds on drug related activities and 35% on alcohol related activities (42 U.S.C. 300x–22) is repealed. (2) The Section 1925 requirement for the States to maintain a revolving fund of $100,000 to assist with half way houses for persons recovering from drug or alcohol abuse is now made optional (42 U.S.C. 300x–25). (3) Section 1930, which requires the States to maintain their financial support for substance abuse services at a level equal to the average of what they had spent the previous two years, is amended to permit non-recurring expenditures for a singular purpose to be excluded from the calculation of the Maintenance of Effort (MOE) requirement (42 U.S.C. 300x–30). (4) Section 1952 is amended to allow any amount paid to a State for a fiscal year to be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were paid, in effect giving a State two years to obligate and spend (42 U.S.C. 300x–62). These changes do not have an impact on the burden estimate for the application.

In addition, changes are being made to the annual reporting requirements associated with Section 1926 (42 U.S.C. 300x–26), which requires States to have in effect a law prohibiting access and distribution of tobacco products to minors under age 18. In Section II, the following changes are being made with respect to Goal #8 and Attachment G: (1) In Goal #8, States will not be required to report on activities that were reported in previous applications (i.e., the requirement to report on prior year compliance information is eliminated). (2) In Attachment G: (a) questions are re-ordered so they are in chronological order to facilitate reporting on compliance activities; (b) seven of the nine questions are revised to define more precisely the information that SAMHSA needs in order to review and approve applications and eliminate duplication in State reporting; (c) Matrix 7a has been renamed Form G3, and Form G3 now requires States to report specific ages of the youth inspectors rather than age ranges. These changes do not impose additional response burden for the application and should shorten the time for review of applications.

ANNUAL REPORTING BURDEN

	Number of respondents	Responses per respondent	Hours per response	Total burden
Sections I–III—Red Lake Indians	[1] 1	1	531	531
Sections I–III—States and Territories	59	1	564	33,276
Section IV–A	40	1	50	2,000
Section IV–B	20	1	42	840
Total				36,647

[1] Red Lake Indian Tribe is not subject to tobacco requirements.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room, 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: November 14, 2000.

Joseph H. Autry III,

Deputy Administrator, SAMHSA.

[FR Doc. 00–29564 Filed 11–17–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–30]

Notice of Proposed Information Collection: Comment Request; Section 8 Project Based Assistance Program: Approval for Police or Other Security Personnel to Live In Project

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 19, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, D.C. 20410, telephone (202) 708–5221 this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Ulyses Bridges, Office of Housing Assistance Policy Division, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–3000 (this is not a toll-free number) for copies of the proposed forms and other available.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Project-Based Assistance Program.

OMB Control Number, if applicable: 2502–

Description of the need for the information and proposed use: Approval for police or other security personnel to live in project.

Agency form numbers, if applicable: N/A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 10,000; the frequency of responses is 1; estimated time to prepare collection is approximately 2 hours, and the total annual burden hours are estimated to be 20,000.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Date: November 13, 2000.

William C. Apgar,

Assistant Secretary for Housing-FHA.

[FR Doc. 00–29555 Filed 11–17–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Revised Environmental Assessment/Habitat Conservation Plan Related to Application for an Incidental Take Permit for the Magic Carpet Woods Association Project, Leelanau Township, Leelanau County, Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; correction.

SUMMARY: This document corrects the Internet address listed in a document published in the **Federal Register** on November 13, 2000, regarding the notice of availability of a revised draft Environmental Assessment (EA) and Habitat Conservation Plan (HCP) for an Incidental Take Permit for the Magic Carpet Woods Association Project, Leelanau Township, Leelanau County, Michigan.

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, (612) 713–5343, *peter fasbender@fws.gov*.

Correction

In the document announcing the notice of availability of draft EA and HCP for incidental take for the piping plover, FR 00–28900, beginning on page 67753 in the issue of November 13, 2000, make the following correction in the **ADDRESSES** section. At the end of the 1st paragraph in **ADDRESSES** section on page 67753, correct the Internet address to ''http://midwest.fws.gov/nepa'' from ''www/midwest.fws.gov/nepa''.

Dated: November 14, 2000.

T.J. Miller,

Acting, Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–29565 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–AF]

Notice of Resource Advisory Council Vacancy

AGENCY: Northeast California Resource Advisory Council Susanville, California, Bureau of Land Management, Interior.

ACTION: Notice of vacancy

SUMMARY: Pursuant to authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council is seeking nominations to fill a vacancy on the council. The person selected to fill the vacancy will complete an unexpired term that ends in September 2002. The designee will be eligible to compete for the full three-year term when the current term expires.

SUPPLEMENTARY INFORMATION: The council vacancy is in membership category two: persons representing national or regionally recognized environmental groups, dispersed recreational activities, archaeological or historical interests, or nationally or regionally recognized wild horse and burro interest groups. Advisory Council members are appointed by the Secretary of the Interior. The person selected must have knowledge or experience in the interest area specified, and must have knowledge of the geographic area under the council's purview (the northeast portion of California and the northwest corner of Nevada).

Qualified applicants must have demonstrated a commitment to collaborate to solve a broad spectrum of natural resource issues.

Nomination forms are available by contacting BLM Public Affairs Officer Joseph J. Fontana, 2950 Riverside Drive, Susanville, CA 96130; by telephone (530) 257–5381; or email, jfontana@ca.blm.gov. Nominations must be returned to: Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130, Attention Public Affairs Officers, no later than Friday, Friday, Jan. 12, 2001.

FOR ADDITIONAL INFORMATION: Contact BLM Eagle Lake Field Manager Linda Hansen or Public Affairs Officer Joseph J. Fontana at the above phone or email address.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–29601 Filed11–17–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–01–1220–PD]

Supplementary Rules for the Silver Saddle Ranch and the Ambrose Carson River Natural Area; Carson City, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplementary rules.

SUMMARY: The Carson City Field Manager establishes these Supplementary Rules in support of the Interdisciplinary Management Plan for the Silver Saddle Ranch and the Ambrose Carson River Natural Area. In 1997, the Bureau of Land Management (BLM) completed a land exchange resulting in the transfer of the Silver Saddle Ranch (SSR) in Carson City from private to public ownership. The ranch includes residential buildings, barns, fences, meadow lands, and sensitive riparian areas along the Carson River. In cooperation with the municipality of Carson City, BLM has developed a long-term management plan. This plan will provide for adequate on-site management and protection of these features, as well as for recreational use of the area by the public. The management plan addresses both the Silver Saddle Ranch and the Ambrose Carson River Natural Area (ACRNA). The ACRNA is managed by the BLM in

partnership with Carson City through the Carson City Parks and Recreation Department to provide recreational access to the Carson River. The ACRNA is located on the east side of Carson River approximately one and a quarter miles north of SSR. The plan also focuses on meshing existing and future management plans for the Prison Hill Recreation Area, Pine Nut Mountains and other public lands adjacent to the river corridor in Eagle Valley. The plan is consistent with provisions of other City plans, including the Carson River Master Plan, Carson River Park Master Plan, Bicycle System Plan, and the Eagle Valley Trails System Plan.

These supplementary rules were reviewed by the public in June, 2000, during the comment period for the final Management Plan for the ACRNA and SSR.

ADDRESSES: Mail: Field Office Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

Personal or messenger delivery: 5665 Morgan Mill Road, Carson City, Nevada 89701.

Internet e-mail: www.nv.blm.gov/carson/default.htm.

FOR FURTHER INFORMATION CONTACT: Chris Miller, Outdoor Recreation Planner, or Richard Conrad, Assistant Manager, Non-Renewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Lands covered by the supplementary rules

The public lands affected by these restrictions are described as follows:

Mt. Diablo Meridian

T. 15 N., R 20 E.,
Sec. 11: SE¼
Sec. 14: E½
Excepting therefrom those public lands within these sections that lie east of Deer run Road.
Sec. 22: SE¼SE¼
Sec. 26: SW¼NE¼, W½, W½SE¼;
Sec. 27: NE¼,NE¼SE¼;
Sec. 35: NW¼NE¼
Excepting therefrom that portion of the NE¼NE¼NW¼ of Section 26 as conveyed to Carson City, and all that portion lying below the natural, ordinary high water line of the Carson River.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rules easier to understanding?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in Nevada. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the ''Public comment procedure'' section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business—commercial or industrial—use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules do not require anything of State, local, or tribal

governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules affect land in only one State, Nevada, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Chris Miller of the Carson City Field Office, Bureau of Land Management, Department of the Interior.

Under the authority of 43 CFR chapter II, part 8360, sections 8364.1, 8365, 8365.1–2, and 8365.1–6, the Nevada State Director proposes supplemental rules applicable to these areas, to read as follows:

Supplementary Rules for the Silver Saddle Ranch and the Ambrose Carson River Natural Area

Sec. 1 Motor vehicle rules

a. You may use motorized vehicles only in parking areas and on designated routes of travel.

b. Motorized vehicles must be equipped with an approved spark arrester, as required and specified by 43 CFR 8343.1(c)

Sec. 2 Closed and limited use areas.

a. You may enter the area of the Silver Saddle Ranch (SSR) west of the Carson River only between the posted hours of sunrise to sunset, except during special events permitted by the BLM. This restriction also applies to SSR lands east of the Carson River and the Ambrose Carson River Natural Area (ACRNA) which are open sunrise to sunset.

b. Except during BLM guided or permitted activities, along the river corridor a three quarter (¾) mile long portion of riparian area west of the banks of the Carson River at the Silver Saddle Ranch, south of the Carson River Park and north of the Mexican Ditch trail, is closed to public use in order to protect both wildlife and riparian vegetation.

c. All agricultural fields are closed to the public while in farming/grazing operational use.

Sec. 3 Other restrictions on recreation use.

a. You may ride bicycles, or horses only on designated trails.

b. West of the Carson River, on the Silver Saddle Ranch, you must keep your dog on a leash at all time.

c. You must remove and properly dispose of any manure created by your pets.

d. To fish, you must possess a valid State of Nevada fishing license.

Sec. 4 Prohibited acts.

You must not:

a. Drive a motorized vehicle except in parking areas in designated routes of travel;

b. Drive a motorized vehicle not equipped with an approved spark arrester;

c. Enter areas that are closed under Sec. 2 of these supplementary rules;

d. Camp at the ACRNA or at the SSR without a permit from BLM-.

e. Discharge any firearms, fireworks, or projectiles.

f. Start or use a campfire without specific BLM authorization. You may use portable stoves using gas, kerosene, jellied petroleum, or pressurized liquid fuel. Until such time as BLM installs permanent fire rings, grates, and/or other appropriate facilities, charcoal fires are allowed only if you first obtain a BLM permit.

g. Ride bicycles or horses except on designated trails;

h. Allow dogs and other pets to run unrestricted in areas specified in Sec. 3b of these supplementary rules;

i. Fail to remove manure deposited by your pet.

Sec. 5 Penalties.

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), any person failing to comply with the supplemental rules provided in the notice, may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733 or both.

Sec. 6 Administrative and emergency use.

These supplementary rules do not apply to emergency or law enforcement personnel, or BLM employees engaged in the performance of their official duties.

Dated: November 3, 2000.

Jean Rivers-Council,

Associate State Director, Nevada.

[FR Doc. 00–29602 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan, Environmental Impact Statement, Mount Rainier National Park, Washington

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement and General Management Plan.

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 Mount Rainier National Park, Washington.

DATES: Comments on the DEIS/GMP will be accepted through February 9,

2001. Public meetings concerning the DEIS/GMP will be held at the following locations and dates: *Seattle:* Sunday, December 3, 2000, 2:00–5:00 PM, Recreational Equipment, Inc. (REI), North Conference Room, 222 Yale N; *Olympia:* Monday, December 4, 2000, 10:00 AM–12:30 PM, Department of Ecology, Main Auditorium, 300 Desmond Drive; *Tacoma:* Monday, December 4, 2000: 5:00 PM–9:00 PM, Washington State History Museum, 1911 Pacific Avenue; *Enumclaw:* Tuesday, December 5, 2000, 5:00–9:00 PM, Green River Community College Center, 1414 Griffin; *Packwood:* Wednesday, December 6, 2000, 5:00–9:00 PM, Packwood Senior Center, 12931 U.S. Highway 12; *Yakima:* Thursday, December 7, 2000, 5:00–9:00 PM, Doubletree Hotel, 1507 North First Street; *Eatonville:* Friday, December 8, 2000, 5:00–9:00 PM, Pack Forest, 9010 453rd St. E.

Comments: If you wish to comment on the DEIS/GMP, you may mail your comments to the Mount Rainier Team, Denver Service Center, P.O. Box 25287, Denver, CO 80225–0287. You may also send your comments via the Internet to *www.mountainercomments@nps.gov.* Note that there are no spaces between the words. Capitalization does not matter. Please submit Internet comments as a text file avoiding the use of special characters and any form of encryption. Be sure to include your name and return street address in your Internet message.

Please be aware that names and addresses of respondents may be released if requested under the Freedom of Information Act. 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. 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. Anonymous comments may be included in the public record. However, the NPS is not legally required to consider or respond to anonymous comments.

ADDRESSES: The DEIS/GMP will be available for review on the Internet at *www.hps.gov/planning.* and *www.nps.gov/mora.* Copies of the DEIS/GMP are available from the Superintendent, Mount Rainier National Park, Star Route, Tahoma Woods, WA 98304. Public reading copies of the DEIS/GMP will be available for review at the following locations: Office of the Superintendent, Mount Rainier National Park, Tahoma Woods, Washington 98304, phone (360) 569–2211; NPS Library, Columbia Cascades Support Office, 909 First Avenue, Seattle, WA 98104–1060, phone (206) 220–4114; Office of Public Affairs, Pacific West Region, NPS, 600 Harrison St., Suite 600, San Francisco, CA 94107–1372, phone (415) 427–1320; Office of Public Affairs, NPS, 18th and C Streets NW, Washington, DC 20240, phone (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes three alternatives for managing the resources, visitors, and facilities in Mount Rainier 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 Mount Rainier National Park over the next 20 years.

The ''no-action'' alternative is a continuation of the present management course regarding the management of visitor use. The NPS's proposed action, alternative 2, would continue focusing on protecting the park's natural and cultural resources, while improving the quality of visitor experiences. Among other actions, shuttle service would be provided to Paradise, White River campground, Sunrise, Mowich Lake, and the Westside Road; overflow parking would be eliminated throughout the park; the Henry M. Jackson Memorial Visitor Center at Paradise would be replaced with a smaller facility; the Carbon River Road would eventually be closed to private vehicles; and private vehicles would park 0.5 mile from Mowich Lake. Alternative 3 would offer a different combination of visitor opportunities than those offered in the proposed action. Under this alternative more designated parking spaces would be provided at several popular facilities, visitors would be able to drive high-clearance vehicles on the Westside Road, the last 0.75 mile of the Mowich Lake Road would be surfaced, and State Road 410 would be plowed in the winter up to the White River entrance. None of the alternatives would propose major new developments within the park. Both alternatives 2 and 3 would establish a visitor carrying capacity framework, provide shuttles, eliminate overflow parking, provide new visitor information services and facilities, and recommend a boundary adjustment near the Carbon River entrance.

The DEIS/GMP evaluates the environmental consequences of the proposed action and the other alternatives on natural resources (e.g., air and water quality, soils, special status species), geologic (volcanic and nonvolcanic) hazards, cultural resources (e.g., historic resources, archeological resources), visitor experiences (e.g., visitor access, the range of activities available, wilderness values and experiences), and the socioeconomic environment (e.g., regional context, gateway communities).

FOR FURTHER INFORMATION CONTACT: Eric Walkenshaw, Mount Rainier National Park, at the above address and telephone number, or Larry Beal, Denver Service Center, P.O. Box 25287, Denver, CO 80225–0287, phone (303) 969–2454.

Dated: November 1, 2000.

William C. Walters

Deputy Regional Director, Pacific West Region.

[FR Doc. 00–29552 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Management Plan/Special Resource Study/Record of Decision Shenandoah Valley Battlefields National Historic District, VA

AGENCIES: Shenandoah Valley Battlefields National Historic District Commission and National Park Service; Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Shenandoah Valley Battlefields National Historic District Commission and the National Park Service have signed a Record of Decision for the Management Plan/Special Resource Study for the Shenandoah Valley Battlefields National Historic District.

The NPS and the Commission will implement the proposed action identified in the Abbreviated Final Environmental Impact Statement (Alternative B: ''Clusters''). A new non-profit organization, the Shenandoah Valley Battlefields Foundation, will be created to manage the District.

Battlefields and related Civil War resources will be protected through the combined efforts of the Foundation and its partners. Visitor services and interpretation will be focused at five geographic groupings—clusters—of battlefields, nearby towns, and other visitor sites. Each cluster will include a Civil War orientation center to interpret the stories of that particular cluster within the context of the larger District. The clusters and other sites in the District will be linked through brochures, interpretive displays, and a wayfinding system that emphasizes historic routes.

The Foundation will represent the varied interests of the District and serve as the ''lead managing partner'' for implementing the plan. As principal partners, the Commonwealth of Virginia and the NPS will serve on the Foundation board and support its operations and programs. The NPS will also provide technical assistance throughout the District.

In the Special Resource Study portion of the plan, the NPS analyzed the District and the battlefields and found that Cedar Creek Battlefield—currently a National Historic Landmark—meets the criteria for inclusion in the National Park System. The NPS will present the study and supporting information to the United States Congress for its consideration.

The proposed action is also the environmentally preferred alternative. Relative to the other alternatives, this alternative would cause the least damage to the environment and best protect, preserve, and enhance historic and cultural resources in the District.

The Commission and the NPS selected the proposed action for several reasons. It was positively received by those that attended the public meetings and responded to the newsletter and draft plan/EIS. It best fulfills the legislative mandate, has the fewest negative impacts, and generates the greatest degree of local participation. In addition, the proposed action distributes the economic benefits of tourism most evenly throughout the District, creates the greatest degree of local stewardship for battlefield preservation, and offers opportunities to tell the most complete story of all the alternatives.

For further information or to receive a complete copy of the Record of Decision, contact: Shenandoah Valley Battlefields NHD Commission, P.O. Box 897, 8895 Collins Drive, New Market, Virginia 22844, (888) 689–4545.

Dated: October 26, 2000.

Marie Rust,

Northeast Regional Director, National Park Service.

[FR Doc. 00–29554 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement; Merced Wild and Scenic River Comprehensive Management Plan; Yosemite National Park, Madera and Mariposa Counties, California; Revision to Record of Decision

SUMMARY: The Department of the Interior, National Park Service has revised the original Record of Decision for the Final Environmental Impact Statement, Merced Wild and Scenic River Comprehensive Management Plan, Yosemite National Park. The Record of Decision was originally signed on August 9, 2000 and published in the **Federal Register** on August 18, 2000. The Revised Record of Decision is designed to clarify statements regarding the process to be used by the National Park Service in complying with § 7 of the Wild and Scenic Rivers Act and to clarify the measurement of the river corridor boundaries and the river protection overlay. The Record of Decision was issued after completion of Draft and Final Environmental Impact Statements for the Merced Wild and Scenic River Comprehensive Management Plan.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1500), and in accord with a ruling of the U.S. District Court for the Eastern District of California, the National Park Service (NPS) prepared and circulated a Draft and Final Environmental Impact Statement for the Merced Wild and Scenic River Comprehensive Management Plan (''Plan''). The Plan was designed to satisfy the Wild and Scenic Rivers Act's requirements for a Comprehensive Management Plan. To achieve this goal, the Plan presented five alternatives for NPS stewardship of an 81-mile segment of the 122 miles of the Merced River designated as ''Wild and Scenic'' by Congress in 1987. Each of the alternatives presented a different combination of seven management elements to prescribe desired future conditions, typical visitor activities and experiences, and allowed park facilities and management activities. The seven management elements are: boundaries, classifications, Outstandingly Remarkable Values, a determination process to comply with § 7 of the Act, the River Protection Overlay, management zoning, and the Visitor Experience and Resource Protection framework.

The Draft and Final Environmental Impact Statements assessed the full range of foreseeable environmental consequences and identified all practicable measures to avoid or minimize environmental impacts. More than 2,500 comments were received on the Draft Environmental Impact Statement and approximately 30 comments were received following the release of the Final Environmental Impact Statement (FEIS). All public comments received were carefully reviewed and considered prior to making a decision on the Plan.

A Record of Decision on the Plan was approved on August 9, 2000 and the Notice of Approval of the Record of Decision appeared in the **Federal Register** on August 18, 2000 (65 FR 50565). In that Record of Decision, the NPS adopted the Proposed Action (Alternative 2), as described in the FEIS. As explained in the original Record of Decision, the primary feature that distinguished Alternative 2 from the other alternatives is the interplay of four of its management elements: boundaries, classifications, River Protection Overlay and management zoning. The NPS determined that Alternative 2 would protect and enhance the river's ORVs while allowing for appropriate levels and types of visitor use and development.

II. Reason for Revision

The Record of Decision is being revised to clarify that all statements in the FEIS and Record of Decision regarding the Army Corps of Engineers' definition of the ''ordinary high water mark'' shall reflect the regulatory definition of that term as found in 33 CFR Section 328.3. This clarification will eliminate text that inaccurately summarized the definition of ordinary high water mark as the 2.33 year floodplain. The regulatory definition of ordinary high water mark as published in the Code of Federal Regulations does not include any reference to the 2.33 year floodplain. Instead, the regulatory definition states: ''The term ''ordinary high water mark'' means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line

impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.''

This regulatory definition will be used by the NPS for measuring the extent of the River Protection Overlay and the river corridor boundaries. The river corridor boundaries established by this Plan begin at the ordinary high water mark (as defined by the U.S. Army Corps of Engineers in 33 CFR Section 328.3) and extend one-quarter mile on each side of the river, except in the El Portal Administrative Site where the boundary extends out to the 100-year floodplain or the extent of the River Protection Overlay, whichever is greater. Similarly, the River Protection Overlay will be measured beginning from the ordinary high water mark.

The Record of Decision is also being revised to clarify statements in the FEIS regarding the process to be used for fulfilling the requirements of § 7 of the Wild and Scenic Rivers Act. The Merced River Plan/FEIS includes statements that ''Water resources projects that have a direct and adverse effect on the values for a designated river must either be redesigned and resubmitted for a subsequent § 7 determination, abandoned, or may proceed following written notification of the Secretary of the Interior and the United States Congress.'' This statement inaccurately summarized the intent of the NPS. The following process will be used by the NPS for projects requiring § 7 review. Water resources projects found to have a direct and adverse effect on the values of this designated river will be redesigned and resubmitted for a subsequent § 7 determination or abandoned. In the event that a project can not be redesigned to avoid direct and adverse effects on the values for which the river was designated, the NPS will either abandon the project or will advise the Secretary of the Interior in writing and report to Congress in writing in accordance with § 7(a) of the Act .

The NPS has reviewed these revisions to determine whether there are any new or different impacts associated with these clarifications. The clarification with regard to the § 7 process does not diminish or change the NPS's obligations to comply with § 7 of the Act, nor does it modify the steps to be followed by the NPS in evaluating whether a project would have a direct and adverse affect on river values. The clarification with regard to the definition of ordinary high water is intended to more accurately reflect the regulatory definition of that term. This clarification does not alter the extent of the river corridor boundaries, and it does not change the use of the River Protection Overlay as a tool to protect areas immediately adjacent to the river. Because these revisions are minor clarifications and do not result in changes to the management elements contained in Alternative 2, they do not result in substantial changes relevant to environmental concerns. These modifications are also not in response to significant new information.

Copies: Interested parties desiring to obtain a copy of the Revised Record of Decision may contact the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite, California 95389 (or via telephone request at (209) 372–0201). The complete document will also be posted on the Yosemite National Park Webpage (http://www.nps.gov/yose/planning).

Dated: November 3, 2000.

John J. Reynolds,

Regional Director, Pacific West.

[FR Doc. 00–29550 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Furnace Creek Water Management Plan, Death Valley National Park, Inyo County, California; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: Pursuant to §102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality regulations (40 CFR 1502.9(c)), the National Park Service intends to prepare an Environmental Impact Statement for a water management plan for the Furnace Creek area in Death Valley National Park. The overall purpose of the plan is to provide for maintaining a sustainable water source meeting appropriate human use needs in the Furnace Creek area, while also protecting unique natural resource values in the area. Upgrading the water supply system is necessary because the existing system is subject to water quality problems. In addition, due to fluctuations in water volumes delivered by the current system, it does not provide a reliable supply of water.

Background: The objectives of the Furnace Creek Water Management Plan include developing a water collection strategy which will: (i) Serve the potable and non-potable Furnace Creek area human use water needs, including the NPS, the AmFac Inn and Ranch Resort, and the Timbisha Shoshone Tribe; (ii) provide for protecting existing biological resource values in the Travertine-Texas Springs area, as well as facilitating potential restoration of riparian and aquatic habitats, in a manner compatible with addressing existing governmental obligations to provide water according to extant amounts.

The current Furnace Creek water collection system was built in the mid-1970's and is nearing the end of its useful life span. The need for replacing this collection system now arises because the current infrastructure undergoes unpredictable fluctuations in the volume of water available for human use, and produces a quality of water that occasionally makes it difficult to achieve state water drinking standards. Since the facilities were originally constructed, inventories of water-dependent plants and animals and the discovery of several new endemic species in the local springs have created greater awareness of the biological value of local wetland and riparian habitats. In addition, completion of this EIS process is consistent with both the existing and draft revision of the park General Management Plan, as well as legislation regarding the Timbisha Shoshone Homeland.

Planning and Public Involvement: During the forthcoming conservation planning and environmental impact analysis process, alternatives and any requisite mitigation measures will be developed that will identify a reasonable range of options for providing a reliable and safe water supply system for Furnace Creek. The process will be conducted in consultation with State and local governments, organizations, Tribes, and interested members of the public. The Furnace Creek Water Management Plan will be prepared by the NPS; its anticipated that cooperating agencies for preparation of the EIS will be identified within 60 days of publication of this Notice in the **Federal Register**. The public will be invited to participate from the outset of the scoping process through completion of the draft and final EIS. To initiate this collaboration, three scoping meetings will be held during winter, 2001 as follows: January 30 (Pahrump), January 31 (Death Valley National Park), and February 1

(Independence). The exact locations and times of the meetings (or scheduling of any additional meetings) will be announced via regional and local news media.

Future Information: Information about development and status of the Furnace Creek Water Management Plan will be distributed via mailings, the Death Valley National Park Webpage (*http://www.nps.gov/deva/planning*), and regional and local news media. To request being added to the mailing list, please leave your name and address on the voice mail telephone at (760) 786–3256 or write to the address below. Interested individuals, organizations, and agencies wishing to provide any written comments on new issues or concerns should respond to: Superintendent, Attn: Furnace Creek Water Management Plan, Death Valley National Park, CA 92328. All such comments must be postmarked on or before March 14, 2001. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision Process: Availability of the Draft EIS for review and comment will be announced by formal Notice in the **Federal Register**, through local and regional news media, the Park's Webpage, and direct mailing. At this time the Draft EIS is anticipated to be available for public review and comment in autumn 2001. Comments on the Draft EIS will be fully considered as an aid in preparing a Final EIS as appropriate. At this time it is anticipated that the Final EIS will be completed in summer 2002. It is anticipated that notice of an approved Record of Decision will be published in the **Federal Register** in winter 2002. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Death Valley National Park.

Dated: November 7, 2000.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 00–29553 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Vacation Cabin Site Policy at Lake Mead National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service announces publication of the Vacation Cabin Site policy at Lake Mead National Recreation Area.

Comments: Written comments were made on the draft revision, with a closing date of September 1, 2000. Only one comment was received on the draft revision, that the policy regarding approved exotic plants for use within the recreation area was confusing. The National Park Service has clarified the language regarding exotic plant species.

ADDRESSES: The Vacation Cabin Site policy is available on the Internet at http://www.nps.gov/lame/concessions/vcs.html. Requests for copies should be sent to Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005.

FOR FURTHER INFORMATION CONTACT: Concessions Program Management at 702/293–8923.

SUPPLEMENTARY INFORMATION: Cabin site lease extensions are expiring in 2000 and 2001. New permits will be issued for a five year period, the maximum length of time allowed by law. This policy will become part of the permit.

There are three vacation cabin site areas within Lake Mead National Recreation Area: Stewart Point (54 sites), located along Lake Mead in Nevada, approximately two miles northeast of Rogers Spring; Temple Bar (32 sites), located along Lake Mead in Arizona, approximately one mile southeast of Temple Bar Resort; and Katherine (35 sites), located along Lake Mohave in Arizona, approximately two miles north of Katherine Landing.

Dated: November 2, 2000.

William K. Dickinson,

Acting Superintendent, Lake Mead National Recreation Area.

[FR Doc. 00–29551 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG); Correction

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Meetings; Correction.

SUMMARY: The Bureau of Reclamation published a notice of public meetings in the **Federal Register** of October 19, 2000 (65 FR 62750), concerning meetings of the Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG). The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov

Correction

In the **Federal Register** of October 19, 2000, in the FR Doc. 00–26934, on page 62750, in the first column, correct the ''Dates and Location'' caption to read:

DATES AND LOCATION: The AMWG will conduct two public meetings as follows:

Phoenix, Arizona—January 11–12, 2001. The meeting will begin at 9:30 a.m. and conclude at 4:00 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Dated: November 15, 2000.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 00–29657 Filed 11–17–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 9, 2000, a proposed Consent Decree in *United States* v. *150 Acres of Land, More or Less,* Civil Action No. 5:95 CV 1009, was lodged with the United States District Court for the Northern District of Ohio.

The Consent Decree settles an action brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability

Act, 42 U.S.C. § 9601, *et seq.,* (''CERCLA'') for the recovery of past costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the Bohaty Drum Site, located in Medina, Ohio. The proposed settlement set forth in the Consent Decree addresses the liability of five Claimants to the defendant Site, each of which owns an undivided interest in the Site. Under the terms of the proposed decree, the Settling Claimants will pay the United States a total of $100,000 in settlement of the United States' past costs claims against the defendant Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States* v. *150 Acres of Land, More or Less,* D.J. Ref. 90–11–2–1108.

The Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue East, Cleveland, Ohio 44114, and at United States Environmental Protection Agency Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–29540 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, and with Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on November 2, 2000, a proposed Consent Decree in *United States* v. *Amerada Hess, et al.,* Civil Action No. 3: CV00–1912, was lodged with the United States District Court for the Middle District of Pennsylvania. In this action, brought pursuant to Sections 106, 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended, 42 U.S.C. 9606, 9607 and 9613, the United States sought injunctive relief and the recovery of costs incurred by EPA in response to the release or threat of release of hazardous substances at the Butler Mine Tunnel Superfund Site, in Pittston Township, Luzerne County, Pennsylvania.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to D.J. Ref. 90–11–3–134/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, c/o Justin Blewitt, Assistant U.S. Attorney, Federal Building Washington & Linden Streets, Scranton, PA 18501; and at U.S. EPA Region III, c/o Charles Hayden, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $40.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–29542 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 3, 2000, a proposed Consent Decree in *United States* v. *The Detroit Edison Company, et al.,* Civil Action No. 00–74844, was lodged with the United States District Court for the Eastern District of Michigan. This Consent Decree represents a settlement of claims brought against the Detroit Edison Company, Ford Motor Company, and General Motors Corporation (''Settling Defendants'') in the above-referenced action under Section 107 of the Comprehensive Environmental Response, Compensation, and Recovery Act (''CERCLA''), 42 U.S.C. 9607, to recover costs incurred by the United States in connection with the J.E. Berger Superfund Site in Detroit, Michigan.

The Department of Justice will receive a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *The Detroit Edison Company, et al.* (E.D. Mich.), D.J. Ref. 90–11–3–06946.

The Consent Decree may be examined at the Office of the United States Attorney, 211 West Fort Street, Suite 2001, Detroit, Michigan 48226–3211, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Bruce S. Gelber,

Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–29541 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on June 29, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chen Yu Enterprises, Burlingame, CA; and EDS, Plano, TX joined the Consortium as associate

members. Also, Sandia National Laboratories, Albuquerque, NM; Lawrence Livermore National Laboratories, Livermore, CA; Polytechnic/Cornell University, Brooklyn, NY; Oak Ridge National Laboratories, Oak Ridge, TN; Novell, Orem, UT; Los Alamos National Laboratory, Santa Fe, NM; General Services Administration, Washington, DC; National Institute of Standards & Technology, Gaithersburg, MD; Siliware, Inc., New York, NY; and Global Transaction Company, Inc., Columbus, OH have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on March 31, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28517).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–29543 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on October 23, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Educational Testing Service, Princeton, NJ; Miami-Dade Community College, Miami, FL; Oracle Corporation, Redwood Shores, CA; Sun Microsystems, Inc., Palo Alto CA; University of Michigan-Ann Arbor, Ann Arbor, MI; eduprise Inc., Morrisville, NC; Microsoft Corporation, Redmond, WA; Apple Computer, Inc., Cupertino, CA; Macromedia, Redwood City, CA; MindLever.com, Raleigh, NC; SCT Corporation, Malvern, PA; unext.com, Deerfield, IL; WebCT, Peabody, MA; Cisco Systems, Inc., San Jose, CA; University of Maryland, Adelphi, MD; Blackboard, Inc., Washington, DC; Department of Education-Training and Youth Affairs (Australia)—University of New England, Armidale, New South Wales, AUSTRALIA; click2learn.com, Inc., Bellevue, WA; and Training Server, Baltimore, MD have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc., intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on July 21, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–29545 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on October 20, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cardsoft, Inc., Mountain View, CA; Centro Ricerche Fiat-CRF, Orbassano, Italy; Enea Realtime AB, Taby, Sweden; Pacific Numerics, San Diego, CA; Mecel AB, Gothenburg, Sweden; Metawave Video Systems, Ltd., Newbury, Berkshire, United Kingdom; Michael Barr, Silver Spring, MD; William N. Locke, Bethel Park, PA; and Joe Sexton, San Jose, CA have been added as parties to this venture. Also, UK Ministry of Defence, Weymouth, United Kingdom has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on July 21, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 11, 2000 (65 FR 49263).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–29544 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2090–00; AG Order No. 2336–2000]

RIN 1115–AE 26

Extension of Designation of Somalia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The designation of Somalia under the Temporary Protected Status (TPS) program expired on September 17, 2001. This notice extends the Attorney General's designation of Somalia under the TPS program until September 17, 2000. Eligible nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) may re-register for TPS and an extension of employment

authorization. Re-registration is limited to persons who registered for the initial period of TPS, which ended on September 16, 1992, or who registered after that date under the late initial registration provision. Persons who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Somalia is effective September 18, 2000, and will remain in effect until September 17, 2001. The 30-day re-registration period begins November 20, 2000, and will remain in effect until December 20, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service (INS), Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority To Extend the Designation of Somalia Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General does not determine that the foreign state no longer meets the conditions for designation, the period is automatically extended for six months pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). The period of designation may, however, be extended to 12 or 18 months at the Attorney General's discretion. 8 U.S.C. 1254a(b)(3)(C). Such an extension makes TPS available only to persons who have been continuously physically present in the United States from the effective date of the initial designation.

Why Did the Attorney General Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General designated Somalia for TPS for a period of 12 months. 56 FR 46804 (Sept. 16, 1991). Since that date, the Departments of State and Justice have annually reviewed conditions within Somalia. Most recently, the Attorney General extended Somalia's TPS designation on September 13, 1999; based on that order, Somalia's TPS designation ran through September 17, 2000. 64 FR 49511 (Sept. 13, 1999).

The Departments of State and Justice have recently reviewed conditions within Somalia. The review resulted in a consensus that a further 12-month extension is warranted. The reasons for the extension are explained in a State Department memorandum that states: ''Open warfare remains a fact of life in southern Somalia, where bands compete for land and power * * *. The current security situation in southern Somalia makes the unqualified return of Somalis from the United States dangerous.''

Based on these reviews, the Attorney General finds that conditions in Somalia warrant a 12-month extension of the designation of Somalia under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). There continues to be an ongoing armed conflict within Somalia and, due to that conflict, requiring the return of aliens who are nationals of Somalia would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). Because the Attorney General did not determine that the conditions in Somalia no longer warrant TPS, the designation was automatically extended by operation of statute on September 18, 2000. 8 U.S.C. 1254a(b)(3)(C). On the basis of the findings described above, the Attorney General finds that the TPS designation for Somalia should be extended for an additional 12-month period, rather than the six-month automatic extension provided for in the statute. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS, How Do I Register for an Extension?

Persons previously granted TPS under the Somalia program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins November 20, 2000 and ends December 20, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. See the chart below to determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

If	Then
You are applying for employment authorization through September 17, 2001.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765 with no fee.
You are apply for employment authorization and are requesting a fee waiver.	You must complete and file the Form I–765, a fee waiver request, and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″ x 1½″).

Where Should I File for an Extension of TPS?

Nationals of Somalia (or persons who have no nationality and who last habitually resided in Somalia) seeking to register for the extension of TPS must submit an application and accompanying materials to the district office of the INS that has jurisdiction over the applicant's place of residence.

When Can I File for an Extension of TPS?

The 30-day re-registration period begins November 20, 2000, and will remain in effective until December 20, 2000.

Is Late Initial Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Somalia under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Somalia (or an alien having no nationality who last habitually resided in Somalia);

(2) Have been continuously physically present in the United States since September 16, 1991;

(3) Have continuously resided in the United States since September 16, 1991; and,

(4) Be admissible as an immigrant, except as otherwise provided in section 244(c) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from September 16, 1991, through September 16, 1992, he or she

(1) Was in valid nonimmigrant status, or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the condition listed above. 8 CFR 244.2(g).

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Somalia (or alien having no nationality who last habitually resided in Somalia) who is otherwise eligible for TPS and has applied for or plans to apply for asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A); 8 U.S.C. 1254a(c)(2)(B).

Does This Extension Allow Nationals of Somalia (or Aliens Having No Nationality who Last Habitually Resided in Somalia) Who Entered the United States After September 16, 1991, To File for TPS?

No. This is a notice of an extension of the TPS designation for Somalia. It is not a notice of redesignation for Somalia for TPS. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States and does not expand TPS availability to include nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who arrived in the United States after the date of the original designation, in this case, September 16, 1991.

Notice of Extension of Designation of Somalia Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Somalia was designated for TPS continue to exist. As a result, I determine that the conditions for the original designation of TPS for Somalia continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Somalia under section 244(b) of the Act is extended for an additional 12-month period from September 18, 2000, until September 17, 2001.

(2) I estimate that there are approximately 350 nationals of Somalia (or persons having no nationality who last habitually resided in Somalia) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from September 18, 2000, to September 17, 2001, nationals of Somalia (or persons having no nationality who last habitually resided in Somalia) who received a grant of TPS (or has an application pending) during the initial period of designation from September 16, 1991, until September 16, 1992, must re-register for TPS by filing a new application for TPS, Form I–821, along with an application for employment authorization, Form I–765, within the 30-day period beginning on November 20, 2000 and ending on December 20, 2000. Late registration will be allowed only for good cause shown pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before September 17, 2001, the designation of Somalia under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(5) Information concerning the TPS program for nationals of Somalia (or persons who have no nationality and who last habitually resided in Somalia) will be available at local INS offices upon publication of this notice and on the INS website at http://www.insdoj.gov.

Dated: November 13, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–29546 Filed 11–17–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 13, 2000.

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) 693–4127 or by E-mail to Kurz/Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 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.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Main Fan Operation and Inspection.

OMB Number: 1219–0030.

Affected Public: Business or other for-profit.

Frequency: Recordkeeping, daily.
Number of Respondents: 7.
Number of Annual Responses: 2,625.
Estimated Time Per Response: 30 minutes.
Total Burden Hours: 1,313.
Total Annualized Capital/Startup Costs: $735.
Total Annual Costs (operating/maintaining systems or purchasing services): $735.
Description: This information is required by 30 CFR 57.22204 and is collected through daily pressure recordings used by the mine operator and MSHA to maintain a constant surveillance on-mine ventilation, and to ensure that unsafe conditions are identified early and corrected. Technical consultants may occasionally review the information when solving problems.

Type of Review: Reinstatement of a previously approved collection for which approval has expired.
Agency: Mine Safety and Health Administration (MSHA).
Title: Record of Examinations for Hazardous Conditions.
OMB Number: 1219–0083.
Affected Public: Business or other for-profit.
Frequency: Recordkeeping, each shift.
Number of Respondents: 1,215.
Number of Annual Responses: 411,885.
Estimated Time Per Response: 1.5 hours.
Total Burden Hours: 617,828.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: 30 CFR 77.1713 requires operators of surface coal mines and surface facilities to keep records of the results of mandatory examinations for hazardous conditions. Records consist of the nature and location of any hazardous condition found and the actions taken to abate the hazardous condition.

Type of Review: Extension of a currently approved collection.
Agency: Mine Safety and Health Administration (MSHA).
Title: Explosive Materials and Blasting Units.
OMB Number: 1219–0095.
Affected Public: Business or other for-profit.
Frequency: On occasion.
Number of Respondents: 7.
Number of Annual Responses: 7.
Estimated Time Per Response: 1 hour.
Total Burden Hours: 7.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: In the absence of permissible explosives or blasing units having adequate blasting capacity for metal and nonmetal gassy mines, 30 CFR 57.22606 provides procedures by which mine operators shall notify MSHA of all non-approved explosive materials and blasting units to be used prior to their use in underground gassy metal and nonmetal mines. MSHA uses this information to determine that the explosives and procedures to be used are safe for blasting in a gassy underground mine.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 00–29618 Filed 11–17–00; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 13, 2000.

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) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 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 comment 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 assumption 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.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.
Agency: Employment and Training Administration.
Title: Job Corps Placement and Assistance Record.
OMB Number: 1205–0035.
Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.
Number of Respondents: 62,429.
Estimated Time Per Respondent: 5 to 15 minutes.
Total Burden Hours: 13,567.
Total Annualized Capital/Startup Costs: $176,731.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: This form is used to obtain information about student training for placement of students in jobs, further education or the military. The forms are prepared by Job Corps Centers and placement specialists for each student separating from Job Corps Centers and have no further impact on the public.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.
Agency: Bureau of Labor Statistics.
Title: National Longitudinal Survey of Women.
OMB Number: 1220–0110.
Affected Public: Individuals or households.
Number of Respondents: 6,889.
Estimated Time Per Respondent: 61 minutes.
Total Burden Hours: 6,976.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services: $0.
Description: The Department of Labor will use this information to help understand and explain the

employment activities, unemployment problems, and retirement decisions of women. The mature women currently are ages 64–78 and the young women are ages 47–57. We first interviewed them for the NLS in 1967 and 1968, respectively.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–29619 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 13, 2000.

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) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 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.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Employment and Training Administration.

Title: Job Corp Enrollee Allotment Determination.

OMB Number: 1205–0030.

Affected Public: Individuals or households; Federal Government.

Frequency: On occasion.

Number of Respondents: 7,500.

Estimated Time Per Respondent: 12 Minutes.

Total Burden Hours: 1,500.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Job Corp enrollees may elect to have a portion of their readjustment allowance/transition payment sent to a dependent biweekly. This form provides the information necessary to administer these allotment and qualification for the allotment.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: Contingent Work Supplement to the Current Population Survey (CPS).

OMB Number: 1200–0153.

Affected Public: Individuals or households.

Frequency: One-time.

Number of Respondents: 48,000.

Estimated Time Per Respondent: 8 Minutes.

Total Burden Hours: 6,400.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The contingent work supplement will gather information on the number and characteristics of workers holding jobs expected to last for a limited time (contingent employment). In addition, the supplement will collect information about workers in several alternative employment arrangements.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–29620 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–30–M

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 following information collection: (1) Regulations 29 CFR part 5, Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements; and (2) Claim for Compensation by Dependents Information Reports. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below within 60 days of the date of this Notice.

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:

29 CFR Part 5, Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements

I. Background

This regulation prescribes labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for construction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA). The Davis-Bacon Act provides that every contract

wage subject to the Act must contain a provision (wage determination) stating the minimum wages and fringe benefits to be paid the various classes of laborers and mechanics employed on the contract. Any class of laborer or mechanic not listed in the wage determination which is to be employed under the contract shall be classified in conformance with the wage determination, and a report of the action shall be submitted to DOL for review and approval. Further, where a benefit plan is not of the conventional type described in the Act and/or common in the construction industry which is established under a customary fund or program, the regulation provides for contractors to request approval of unfunded fringe benefit plans.

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 ensure that employees on federally financed or assisted contracts receive the wage protection to which they are entitled by law.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Act Reporting Requirements-Regulations 29 CFR part 5.

OMB Number: 1215–0140.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion.

Requirement	Respondents	Responses	Time per response	Burden hours
Conformance Report	3,500	3,500	15 min	875
Unfunded Fringe Benefit Plans	6	6	1 hour	6

Total Responses: 3,506.

Estimated Total Burden Hours: 881.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,262.16.

Claim for Compensation by Dependents Information Reports

I. Background

The forms included in this information request are used by Federal employees and their dependents to claim benefits, prove continued eligibility for benefits, and to show entitlement to the remaining compensation of a deceased beneficiary under the Federal Employees' Compensation Act. There are nine forms in this information collection request. They are the CA–5, CA–5b, CA–1031, CA–1085, CA–1093, CA–1615, CA–1617, CA–1618, and CA–1074.

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 meet the statutory requirements of the Federal Employees' Compensation Act. The information contained in these forms is used by the Division of Federal Employees' Compensation to determine entitlement to benefits under the Act, to verify dependent status, and to initiate, continue, adjust, or terminate benefits based on eligibility criteria.

Review: Extension.

Agency: Employment Standards Administration.

Title: Request for Earnings Information.

OMB Number: 1215–0155.

Agency Numbers: CA–5, CA–5b, CA–1031, CA–1074, CA–1085, CA–1093, CA–1615, CA–1617, and CA–1618.

Affected Public: Individuals or households.

Form	Respondents/responses	Frequency	Minutes per form	Burden hours
CA–5	150	Once	90	225
CA–5b	20	Once	90	30
CA–1615	600	Once	30	300
CA–1617	300	Semiannually	30	150
CA–1085	500	Once	45	375
CA–1031	150	Annually	15	37
CA–1074	10	Once	60	10

Form	Respondents/ responses	Frequency	Minutes per form	Burden hours
CA–1093	15	Once	30	7
CA–1618	150	Semiannually	30	75

Total Responses: 1,895.

Estimated Total Burden Hours: 1,209.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $435.

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 14, 2000.

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. 00–29617 Filed 11–17–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel (National Heritage Fellowships sections) to the National Council on the Arts will be held on December 5–8, 2000 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: November 8, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–29559 Filed 11–17–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnerships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that two meetings of the Partnerships Advisory Panel (Regional Partnership Agreements sections A and B) to the National Council on the Arts will be held by teleconference at 3:00 p.m. on December 12 and 3:00 p.m. on December 13, 2000 in Room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

These meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: November 13, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–29560 Filed 11–17–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Executive Committee.

DATE AND TIME: November 22, 2000, 10 a.m.–10:15 a.m. Open Session; November 22, 2000, 10:15 a.m.–11 a.m. Closed Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Room 1205, Arlington, VA 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Wednesday, November 22, 2000

OPEN SESSION (10 a.m. to 10:15 a.m.)

—Approval of NSB Interim Report on International S&E

—Approval of Management Response to NSF/OIG Semiannual Report

CLOSED SESSION (10:15 a.m. to 11 a.m.)

—NSF Budget

Marta Cehelsky,

Executive Officer.

[FR Doc. 00–29715 Filed 11–15–00; 4:59 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company, South Carolina Public Service Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12 issued to South Carolina Electric & Gas Company (SCE&G, the licensee) for operation of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

The proposed amendment would change Technical Specifications (TS) 3.8.1.1 and 3.8.1.2 to revise the minimum volume requirements for the emergency diesel generator (EDG) fuel oil system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The proposed change raises the minimum required fuel oil storage volume to 48,500 gallons for Modes 1–4 and raises the minimum required fuel oil storage volume to 42,500 gallons for Modes 5 and 6. These new TS volume requirements reflect design basis calculation revisions for load requirements following a design basis accident [DBA]. The increase in these TS volume requirements ensure[s] that at least 2% margin is maintained above the seven day requirement for Modes 1–4. Also, it ensures that at least 10% margin is maintained above the seven day requirement for Modes 5 and 6, which meets the 10% margin requirement set forth in Section 5.4 of ANSI [American National Standards Institute] N195–1976, ''Fuel Oil Systems for Standby Diesel Generators.'' This change also raises the day fuel tank minimum volume to 360 gallons for Modes 1–6, which meets the 10% margin requirement set forth in Section 6.1 of ANSI N195–1976, ''Fuel Oil Systems for Standby Diesel Generators.'' These revised TS volume requirements ensure that each EDG can supply the output necessary to assure the operation of the plant equipment required to prevent unacceptable consequences for any plant design basis event or accident condition. Therefore, there is no impact on the consequences of any accident.

In addition, the licensee performed an analysis to consider the impact of the proposed TS Bases change involving Fuel Oil Storage Tank capacity on plant risk. The licensee concluded that the increase in risk resulting from the proposed change to the licensing basis is insignificant. This change does not involve a significant increase in the probability of an accident previously evaluated since the change solely impacts risk during Loss of Offsite Power (LOOP) conditions for a duration of longer than about 7.14 days. When a LOOP of this duration occurs, the TS Bases change will reduce the operator response time to replenish the Fuel Oil Storage Tank to prevent the loss of a diesel generator from 7.7 days to 7.14 days for each of the EDGs. SCE&G believes that, given the relatively large recovery times, this reduction in response time will not significantly affect the calculated human error probabilities of operator response time. In addition, the change in the probability of recovery of AC power in the time frame between 7.14 days and 7.7 days is small. Therefore, SCE&G concludes that the risk impact of the proposed TS Bases change involving Fuel Oil Storage Tank capacity is small.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

The proposed change raises the minimum required fuel oil storage volume to 48,500 gallons for Modes 1–4 and raises the minimum required fuel oil storage volume to 42,500 gallons for Modes 5 and 6. These new TS volume requirements reflect design basis calculation revisions for load requirements following a design basis accident. The increase in these TS volume requirements ensure[s] that at least 2% margin is maintained above the seven day requirement for Modes 1–4. Also, it ensures that at least 10% margin is maintained above the seven day requirement for Modes 5 and 6, which meets the 10% margin requirement set forth in Section 5.4 of ANSI N195–1976, ''Fuel Oil Systems for Standby Diesel Generators.'' This change also raises the day fuel tank minimum volume to 360 gallons for Modes 1–6, which meets the 10% margin requirement set forth in Section 6.1 of ANSI N195–1976, ''Fuel Oil Systems for Standby Diesel Generators.'' These changes are not associated with the possibility to create any new or different accident.

In addition, the proposed TS Bases change involving Fuel Oil Storage Tank capacity margins does not create the possibility of any new or different kind of accident. A single failure, consisting of the loss of one train of EDG fuel oil storage and transfer systems will not result in the loss of minimum diesel generator capacity, which is in accordance with Section 5.2 of ANSI N195–1976, ''Fuel Oil Systems for Standby Diesel Generators.'' The on-site oil storage shall remain sufficient to operate the minimum number of diesel-generators following the limiting DBA for 7 days, with at least 2% margin for Modes 1–4 and at least 10% margin for Modes 5 and 6.

3. Does this change involve a significant reduction in margin of safety?

No.

The proposed change raises the minimum required fuel oil storage volume to 48,500 gallons for Modes 1–4 and raises the minimum required fuel oil storage volume to 42,500 gallons for Modes 5 and 6. These new TS volume requirements reflect design basis calculation revisions for load requirements following a design basis accident. The increase in these TS volume requirements ensure[s] that at least 2% margin is maintained above the seven day requirement for Modes 1–4. Also, it ensures that at least 10% margin is maintained above the seven day requirement for Modes 5 and 6, which meets the 10% margin requirement set forth in Section 5.4 of ANSI N195–1976, ''Fuel Oil Systems for Standby Diesel Generators.'' This change also raises the day fuel tank minimum volume to 360 gallons for Modes 1–6, which meets the 10% margin requirement set forth in Section 6.1 of ANSI N195–1976, ''Fuel Oil Systems for Standby Diesel Generators.''

In addition, the proposed TS Bases change involving Fuel Oil Storage Tank capacity does not involve a significant reduction in the margin of safety. A single failure, consisting of the loss of one train of EDG fuel oil storage and transfer systems will not result in the loss of minimum diesel generator capacity, which is in accordance with Section 5.2 of ANSI N195–1976, ''Fuel Oil Systems for Standby Diesel Generators.'' The on-site oil storage shall remain sufficient to operate the minimum number of diesel-generators following the limiting DBA for 7 days, with at least 2% margin for Modes 1–4 and at least 10% margin for Modes 5 and 6.

The licensee performed an analysis to evaluate the impact of the proposed TS Bases change involving Fuel Oil Storage Tank capacity on plant risk. The licensee concluded that the increase in risk resulting from the proposed change to the licensing basis is insignificant. This change does not involve a significant reduction in the margin of safety since the change solely impacts risk during Loss of Offsite Power (LOOP) conditions for a duration of longer than about 7.14 days. When a LOOP of this duration occurs, the TS Bases change will reduce the operator response time to replenish the Fuel Oil Storage Tank to prevent the loss of a diesel generator from 7.7 days to 7.14 days for each of the EDGs. SCE&G believes that, given the relatively large recovery times, this reduction in response time will not significantly affect the calculated human error probabilities of operator response time. In addition, the change in the probability of recovery of AC power in the time frame between 7.14 days and 7.7 days is small. Therefore, SCE&G concludes that the risk impact of the proposed TS Bases change involving Fuel Oil Storage Tank capacity is small.

Pursuant to 10 CFR 50.91, the preceding analyses provides a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 20, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 10, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North,

11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 14th day of November 2000.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–29635 Filed 11–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Summary and Categorization of Public Comments on the Control of Solid Materials: Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the completion and availability of NUREG/CR–6682, Final Report, entitled ''Summary and Categorization of Public Comments on the Control of Solid Materials.''

ADDRESSES: Copies of NUREG/CR–6682, Final Report, may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, Maryland. A copy is also posted on the NRC's internet web site at URL = ''http://www.nrc.gov/NMSS/IMNS/controlsolids.html.''

FOR FURTHER INFORMATION CONTACT: Giorgio Gnugnoli, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7135.

SUPPLEMENTARY INFORMATION: At this time, the NRC is in the preliminary stages of examining its approach for control of solid materials and has sought public input to its decision-making process through various forums. To aid in this process, the NRC prepared an Issues Paper that described issues and alternatives related to release of solid materials. This Issues Paper was published in the **Federal Register** on June 30, 1999, (64 FR 35090). That **Federal Register** Notice (FRN) provided for an opportunity to submit public comments on the Issues Paper, in general, and specifically on the NRC examination of its approach for control of solid material. The closing period for public comments was originally November 15, 1999, but was extended until December 22, 1999. The FRN invited public comment on the paper and, to provide further opportunity for public input, the NRC held a series of public meetings during Fall 1999 at the following four locations: (1) San Francisco, CA on September 15–16, 1999; (2) Atlanta, GA on October 5–6, 1999; (3) Rockville, MD on November 1–2, 1999; (4) Chicago, IL on December 7–8, 1999.

The Issues Paper described the following 2 process alternatives: (1) Continue current NRC practice of case-by-case consideration of licensee requests for release of solid material or consider updating existing guidance; and (2) conduct a rulemaking to establish criteria for control of solid materials.

Over 800 comments have been received on the Issues Paper. The majority of the comments focused on the specific technical approaches. With the assistance of contractors, the public meeting transcripts and the public comments received by the NRC staff were collected and organized into a database to facilitate NRC staff review of the public comment. The NUREG/CR–6682 provides a summary and characterization of the public comments and meetings, as well as major trends in the comments.

Various sections of the NUREG/CR–6682 summarize comments received on the process alternatives for establishing criteria for control of solid material. These alternatives include continuing the current case-by-case approach or whether to conduct a rulemaking. Moreover, the NUREG/CR–6682 summarizes comments on the technical approaches as to what the criteria should be. Finally, comments on development of NRC's technical information base, other procedural issues, international issues, and materials that should be considered are also addressed.

The public comments received were discussed in SECY–00–0070, dated March 23, 2000, which provided the Commission with a summary of results of the public meetings. They were also part of the information available to the Commission in making a decision, on August 18, 2000, to defer a final decision on whether to proceed with rulemaking and in providing direction to the NRC staff to proceed with a National Academy of Sciences study on alternatives and to continue with development of a technical information base. The comments will be used by the NRC in its continuing evaluation of this issue.

Dated at Rockville, Maryland, this 9th day of November 2000.

For the Nuclear Regulatory Commission.

Patricia Holahan,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 00–29636 Filed 11–17–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27277]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 13, 2000.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 8, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 8, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–8429)

American Electric Power Company, Inc. (''AEP''), a registered holding company, and its wholly owned subsidiary, AEP Resources, Inc. (''Resources'', and together with AEP, ''Applicants''), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and rules 45 and 53 under the Act to their application-declaration previously filed under the Act.

By orders dated December 22, 1994, May 10, 1996 and April 27, 1998 (''Prior Orders'') (HCAR Nos. 26200, 26516 and 26864), the Commission authorized AEP and Resources to, among other things, issue debt and equity securities (''Securities'') [1] through December 31, 2000, for investment in ''exempt wholesale generators'' (''EWGs'') and ''foreign utility companies'' (''FUCOs''), as defined in sections 32 and 33 of the Act. AEP and Resources were also authorized to acquire the securities of one or more companies (''Project Parents'') that directly or indirectly hold the securities of one or more EWGs or FUCOs (''Power Projects''). The Prior Orders also provided authority for AEP to guarantee the obligations of Resources, for AEP and Resources to guarantee the obligations of one or more Project Parents or Power Projects, and for Project Parents to guarantee the obligations of their Power Projects [2] all in an aggregate amount which, together with the proceeds of the Securities, would not exceed 100% of AEP's consolidated retained earnings, as defined in rule 53(a) under the Act (''Investment Limitation'').

By order dated June 14, 2000 (HCAR No. 27186), the Commission approved the merger of AEP and Central and South West Corporation ''CSW''), a registered holding company. In the order, the Commission also increased the Investment Limitation to allow AEP to issue and sell Securities and provide guarantees in an amount of up to 100% of AEP and CSW's combined consolidated retained earnings after giving effect to the merger (''Modified Investment Limitation'').

The Applicants now request authority for AEP to extend, through June 30, 2005 and within the Modified Investment Limitation, AEP's authority under the Prior Orders to issue and sell Securities and to guarantee the indebtedness and other financial commitments of Resources, Project Parents and Power Projects for investments in EWGs and FUCOs. The Applicants separately request authority, through June 30, 2005, for Resources to guarantee obligations, other than indebtedness, [3] of Project Parents and Power Projects, and for Project Parents to guarantee obligations of Power Projects, other than indebtedness, each in amounts not exceeding $3 billion outstanding at any time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29598 Filed 11–17–00; 8:45 am]

BILLING CODE 8010–01–M

[1] In particular, AEP was authorized to issue and sell up to ten million shares of its common stock and to incur short-term debt in the form of notes issued to banks and commercial paper. Resources was authorized to incur short-term and long-term debt. The Applicants state that, because of the adoption of rule 52, any securities issuance by any associate company, other than AEP, constitutes an exempt transaction under the rule.

[2] The Prior Orders provided that AEP could guarantee Resources' issuance of long-term notes having terms of not less than nine months nor more than twenty years, bearing interest at a fixed rate, a fluctuating rate or a combination of fixed and fluctuating rates. AEP was authorized also to guarantee borrowings by Resources under lines of credit that would generally bear interest at an annual rate not greater than the prime commercial rate in effect from time to time. Finally, the prior Orders authorized AEP to guarantee the issuance and sale of commercial paper by Resources maturing not more than 270 days from the date of issuance.

[3] The Applicants state that guarantees by AEP subsidiaries of indebtedness is exempt under rules 45 and 52.

DEPARTMENT OF STATE

[Public Notice 3478]

Office of Visa Services; 60-Day Notice of Proposed Information Collection: J Visa Waiver Review Application Data Sheet

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New collection of information Originating Office: CA/VO.

Title of Information Collection: J Visa Waiver Review Application Data Sheet.

Frequency: Once per application.

Form Number: None assigned.

Respondents: Foreign Applicants.

Estimated Number of Respondents per year: 10,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 20,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Eric Cohan, 2401 E St NW, Rm L–703, U.S. Department of State, Washington, DC 20520, Tel: 202–663–1164.

Dated: September 14, 2000.

George Lannon,

Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 00–29628 Filed 11–17–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 3477]

Bureau of Oceans and International Environmental and Scientific Affairs; Notice of Information Collection Under Emergency Review: State Department Form DS–2031, OMB No. 1405–0095

AGENCY: Department of State.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency approval.

Originating Office: OES/OMC.

Title of Information Collection: Shrimp Exporter's/Importer's Declaration.

Frequency: 10,000.

Form Number: DS–2031.

Respondents: Shrimp exporters and importers.

Estimated Number of Respondents: 3,000.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 1,667 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by December 31, 2000. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

• 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, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to David Hogan, Office of Marine Conservation, 202–647–2335, U.S. Department of State, Washington, DC 20520.

Dated: November 7, 2000.

David Balton,

Acting Deputy Assistant Secretary for Oceans, Fisheries and Space, Department of State.

[FR Doc. 00–29627 Filed 11–17–00; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Camarillo Airport, Camarillo, California

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The FAA announces that it is reviewing a proposed Noise Compatibility Program submitted by the county of Ventura for the Camarillo Airport, Camarillo, California under the provisions of Title I of the Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (thereinafter referred to as ''the Act'') and Title 14, Code of Federal Regulations (CFR), part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under Title 14, CFR, part 150 were in compliance with applicable requirements effective September 10, 1998. The proposed Noise Compatibility Program will be approved or disapproved on or before May 4, 2001.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is November 6, 2000. The public comment period ends January 4, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: PO Box 92007 World Way Postal Center, Los Angeles, CA, 90009–2007; street address: 15000 Aviation Boulevard, Hawthorne, CA, 90261; Telephone Number (310) 725–3614. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Camarillo Airport which will be approved or disapproved on or before May 4, 2001. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Title 14, CFR, part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth in the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Camarillo Municipal Airport, effective on September 6, 2001. It is requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before, May 4, 2001.

The FAA's detailed evaluation will be conducted under the provisions of Title 14, CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Community Environmental Needs Division, 800 Independence Avenue, SW, Room 621, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Room 3012, Hawthorne, CA, 90261.

County of Ventura, Department of Airports, 555 Airport Way, Camarillo, CA 93010.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on November 6, 2000.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 00–29662 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held December 5–7, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: December 5: Plenary Session; (1) Introductory Remarks; (2) Review and Approve Agenda; (3) Working Group–2, AMS(R)S Avionics Equipment MOPS, (WG–2) Convenes to continue work of Minimum Aviation System Performance Standards (MASPS) document; December 6: (4) Working Group–3, AMS(R)S MASPS, (WG–3) Convenes to continue work of VDL 2 and VDL 3 Minimum Operational Performance Standards (MOPS) Document (may convene on Tuesday if WG–2 finishes early); December 7: (5) Plenary reconvenes; (6) Review of ICAO and Aeronautical Mobile Communications Panel (AMCP) activities; (7) Review Working Group activities; (8) Review Standards and Recommended Practices (SARPs) Changes; (9) Other Business; (10) Date and location of Next meeting; (11) Closing. Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 13, 2000.

Jancie L. Peters,

Designated Official.

[FR Doc. 00–29663 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/EUROCAE Working Group 44; Terrain and Airport Database

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held December 4–8, 2000, starting at 9:00 a.m. The meeting will be held at Hilton Melbourne Beach Oceanfront, 3003 North A1A, Indialantic, FL 32903 (just North of Melbourne).

The agenda will include: December 4: Opening Plenary Session: (1) Welcome and Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Review Summary of the Previous Meeting; (4) Presentation: ''Intermap Technologies;'' (5) Presentation: ''DEM's and Airport Vector Data;'' (6) Presentation/Discussion: ''Proposal for Development of Object-Oriented Symbology & Color Renderings for Advanced Cockpit Avionics;'' Subgroup 2, Terrain and Obstacle Databases: (a) Review Summary of the Previous Meeting; (b) Review Actions of the Previous Meeting; (c) Review of the Draft Document; (7) Subgroup 3, Airport Databases: (a) Review Summary of the Previous Meeting; (b) Review Actions of the Previous Meeting; (c) Review of the Draft Document; (d) Presentation: ''Exemplary Airport Generation and Validation using RTCA SC–193/EUROCAE WG44 SG3 Methodology;'' December 5–6: (8) Continue Subgroups 2 and 3 Discussion; December 7: Plenary Session: (9) Continue Subgroups 2 and 3 Discussion; December 8: Closing Plenary Session: (10) Summary of Subgroups 2 and 3; (11) Assign Tasks; (12) Other Business; (13) Date and Location of Next Meeting; (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://*www.rtca.org* (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 13, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–29664 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Elmira/Corning Regional Airport, Elmira, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of the proposed release of approximately 25 acres of land at Elmira/Corning Regional Airport to allow its sale for the development of commercial retail stores. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The Fair Market Value of the land will be paid to the Airport Sponsor, and used for capital development of the airport.

Any comments the agency receives will be considered as a part of the decision.

DATES: Comments must be received on or before December 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Ann L. Clarke, Airport Manager, Elmira/Corning Regional Airport, at the following address: Ms. Ann L. Clarke, Airport Manager, Elmira Corning Regional Airport, Suite 1, 276 Sing Sing Road, Horseheads, New York 14845.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; E-Mail *Philip.Brito@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public

notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Garden City, New York, on October 3, 2000.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 00–29576 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Glynco Jetport, Brunswick, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Glynco Jetport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steven V. Brian, Executive Director of the Glynn County Airport Commission at the following address: Mr. Steven V. Brian, Executive Director, Glynn County Airport Commission, 500 Connole Street, Brunswick, Georgia 31525.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Glynn County Airport Commission under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie Dominy, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 3003337–2747, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Glynco Jetport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 6, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Glynn County Airport Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 9, 2001.

The following is a brief overview of the application.

PFC Application No. 00–01–C–00–BQK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2001.

Proposed charge expiration date: November 1, 2010.

Total estimated net PFC revenue: $517,141.

Brief description of proposed project(s):

- Master Plan
- Baggage Claim and ARFF Extension
- Remark Runway
- Rehabilitate Taxiway ''D''
- Construct ARFF Maintenance Facility
- Terminal Roadway Improvements
- Terminal Renovation
- Alternative Impose Retire PFC Debt

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non scheduled certificate route air carrier (filing form T–100).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Glynn County Airport Commission.

Issued in Atlanta, Georgia on November 6, 2000.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 00–29661 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the twenty-first session of the United Nation's Committee of Experts on the Transport of Dangerous Goods (UN COE) to be held December 4–13, 2000 in Geneva, Switzerland.

DATES: November 28, 2000 9:30 AM–1:00 PM, Room 2201; January 11, 2001, 10:00 AM–1:00 PM, Room 8236–8240.

ADDRESS: Both meetings will be held at DOT Headquarters, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, or Bob Richard, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the twenty-first session of the UN COE and to discuss U.S. positions on UN COE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UN COE session and to prepare for the Committee's 2001–2002 biennium which commences with the nineteenth session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UN COE) which is scheduled for July 2–13, 2001 in Geneva, Switzerland. Topics to be covered during the public meetings include: (1) Global harmonization of classification criteria including flammable aerosol test methods and criteria; (2) Reformatting the UN Recommendations into a model rule, (3) Intermodal portable tank requirements including requirements for the transport of solids in portable tanks, (4) Requirements applicable to small quantities of hazardous materials in transport (limited quantities) including package marking requirements, package quantity limits and requirements

applicable to consumer commodities, (5) Harmonized requirements for compressed gas cylinders, (6) Classification of individual substances, (7) Requirements for bulk and non-bulk packagings used to transport hazardous materials, (8) Requirements for the transport of Ammonium Nitrate Emulsions and (9) Hazard communication requirements including harmonized shipping paper requirements.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgcomm/dgcomm.html. Information concerning UN dangerous goods meetings including agendas can be downloaded at http://www.unece.org/trans/danger/meetings.htm#ST/SG. These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm. RSPA's site also provides information regarding the UNCOE and SCOE and related matters such as a summary of decisions taken at the 18th session of the UNSCOE, meeting dates and a summary of the primary topics which the UNCOE plans to address.

Issued in Washington, DC, on November 14, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–29573 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33954]

Hollis & Eastern Railroad Company, a Delaware Corporation—Acquisition and Operation Exemption—Hollis & Eastern Railroad Company, an Oklahoma Corporation

Hollis & Eastern Railroad Company (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate the railroad line of Hollis & Eastern Railroad Company (Target) between Duke, OK, at milepost 0, and the Wichita, Tillman & Jackson Ry. Co. line, at milepost 14, located approximately 14 miles to the east.[1]

The transaction was scheduled to be consummated on or about November 9, 2000. The earliest the transaction could be consummated was November 7, 2000, 7 days after the exemption was filed.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding 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. 33954, 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, a copy of each pleading must be served on Bryan Bishop, Esq., Locke Liddell & Sapp LLP, 2200 Ross Avenue, Suite 2200, Dallas, TX 75201.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 13, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–29651 Filed 11–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Grant Program for Research and Development in the Field of Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of request for grant applications.

SUMMARY: The Bureau of Transportation Statistics supports its goal of advancing the field of transportation statistics through the Transportation Statistics Research Grants program. This notice solicits applications for projects that (1) support the development of the field of transportation statistics; and/or (2) involve research or development in transportation statistics. It outlines the purpose, goals, and general procedures for application and award. For FY 2001, BTS will make available up to $500,000 in grant funds to eligible organizations.

DATES: For BTS to consider your application, we must receive it by January 19, 2000, at 5 P.M. Eastern Standard Time. Applications received after January 19, 2000, will be held for the next cycle, which is anticipated to be every six to twelve months, unless you request in writing that your application be returned.

ADDRESSES: You must send six copies of the application package to the BTS Grants Program, Room 3430, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Promod Chandhok, Office of Statistical Programs and Services, Bureau of Transportation Statistics, Room 3430, 400 Seventh Street, SW, Washington, DC 20590; phone (202) 366–2158; fax: (202) 366–3640; e-mail: promod.chandhok@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Background—Advancing the Discipline of Transportation Statistics

The purpose of this grant program is to provide financial assistance to eligible organizations to help advance the discipline of transportation statistics. These grants are authorized by section 5109 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178 (1998), codified at 49 U.S.C. 111(g)). BTS anticipates awarding up to $500,000 per year in grants for projects that (1) support development of the field of transportation statistics; and/or (2) advance research or development in transportation statistics.

BTS is an operating administration within the U.S. Department of Transportation (DOT). Its mission is to lead in developing transportation data and information of high quality, and to advance their effective use in public and private transportation decision-making. In accomplishing this mission, BTS works to improve six key attributes of transportation data and analysis—quality, comparability, completeness, timeliness, relevance, and utility.

Our ultimate goal is to make transportation better—to enhance safety, mobility, economic growth, the human and natural environment, and national security (the five strategic goals of the

[1] Target, an Oklahoma corporation, is a 99.3%-owned subsidiary of Republic Gypsum Company. Applicant, a Delaware corporation, is a wholly owned subsidiary of Target. Target will, pursuant to Oklahoma and Delaware law, merge into Applicant with Applicant being the surviving corporation. Following the mergers, Applicant will be converted to a Delaware limited liability company. As a result, the state of incorporation of Target will be changed from Oklahoma to Delaware, and Target will be changed to a Delaware limited liability company.

Department of Transportation). BTS's role in this goal is to put together data and information that others need to make decisions concerning transportation. We collect data and compile, analyze, and publish statistics. Many others, both within and outside DOT, are involved in building this knowledge base and BTS could not do it alone.

While there are many excellent transportation data programs and many excellent statistics programs, few are devoted to the intersection of these two disciplines. Bringing a better understanding of statistics to transportation data will improve data quality, increase utility (e.g., by improving measures of travel), and reduce costs (e.g., by using techniques to make data collection, analysis, and dissemination more efficient). BTS wants to foster the transportation statistics discipline and increase its quality and usefulness to the transportation community. This grants program is one way BTS is working toward this goal.

II. Eligibility Requirements

What Organizations May Apply?

BTS invites applications from public and private non-profit institutions of higher education. We strongly encourage Minority Serving Institutions, which have been traditionally under represented in transportation statistics, to submit applications. If organizations partner on a project, the participants should submit a single application. You may submit more than one application as long as the applications are for separate and distinct projects.

What Projects Are Eligible for Funding?

Eligible projects must support the development of the field of transportation statistics and/or involve research or development in transportation statistics. Examples include, but are not limited to, research and development in the following areas:

(1) Visualizing and mining transportation databases;

(2) Aggregating and analyzing databases maintained by DOT agencies, especially where the research involves multiple modes of transportation;

(3) Improving the quality and usability of federal transportation statistics;

(4) Developing exposure measures (e.g., vehicle miles traveled) for use in risk analyses;

(5) Improving the statistical use of geographic information systems to better understand and quantify travel behavior;

(6) Developing performance measures for the transportation system;

(7) Designing and analyzing transportation surveys;

(8) Improving data quality and data collection; and

(9) Enhancing or extending the National Transportation Library to better express or incorporate statistical analyses.

What Are the Cost Sharing Requirements?

For awards of $100,000 or more, the recipient shall fund at least 50 percent of the project's total estimated funding requirement. The nonfederal match must come from sources other than the project sponsor, and must be cash contributions rather than in-kind contributions. In reviewing all applications, even those requesting less than $100,000, the degree of cost-sharing will be considered, with more weight given to cash contributions than in-kind services.

III. Application Contents

For more information about sending your application, please refer to the **ADDRESSES** and **DATES** sections listed above. In order to be considered for funding under this program, your application package must include the following:

(1) A Project Narrative. This must not exceed seven letter-size pages, single-sided and double-spaced. Use at least 12-point type and one inch margins. In general, the information you provide should be in sufficient detail so BTS understands the proposed work and its anticipated benefits. It should also demonstrate that you have the necessary experience and resources to accomplish it. The narrative must identify the organization; how it meets the eligibility criteria; its experience and accomplishments in collecting, analyzing, and/or disseminating transportation data; and the qualifications of the principals proposed to conduct the activities. The narrative must also describe the proposed activity, including how you would accomplish it, a timeline listing major milestones associated with the project, and a list of specific products and/or services with the dates they will be delivered.

(2) An Application for Federal Assistance. Submit OMB SF–424 (Application for Federal Assistance), which is the official form required for all federal grants. It requests basic information about the grantee and the proposed project. Under Part 10 of this form, use 20.920 and Transportation Statistics Research Grants for the Catalog of Federal Domestic Assistance Number and Title. Also submit OMB SF–424A (Budget Information—Nonconstruction Programs). You can download these forms from the OMB Internet site at http://www.whitehouse.gov/omb/grants.

(3) An Evaluation Plan. Include a brief description of how you will evaluate and measure the success of the project, including the anticipated benefits and challenges in completing it. This can be part of the Project Narrative.

(4) Resumes. Include resumes of up to three key personnel who would be significantly involved in the project.

(5) Letters of Commitment. If your proposal includes the significant involvement of other eligible organizations, your application must include letters of commitment from them.

IV. Application Review Process and Selection Criteria

The Transportation Statistics Research Grants program uses a competitive process and applications will be evaluated based on the merit and relevance of the proposed project in relation to the other applications received. BTS anticipates making multiple awards based on this solicitation. While BTS will select the most meritorious proposals, we may choose to not award all available funds.

Upon receiving an application, BTS will conduct an initial review to determine if it meets the eligibility criteria and contains all of the items specified under the Application Contents section of this announcement. A BTS evaluation committee will then review each complete application from an eligible recipient using the evaluation criteria listed below (the order of criteria does not designate priority) and the BTS Director will select the final grants. The evaluation criteria are:

(1) How well does the proposal support BTS's strategic goals of improving the quality, comparability, completeness, timeliness, relevance, and utility of transportation data? How well does the proposal serve the broad transportation interests of the United States?

(2) How innovative is the proposed activity? To what extent is the work being accomplished elsewhere?

(3) How much experience has the applicant demonstrated in one or more of the following areas—collecting, analyzing, storing, or disseminating transportation data, particularly data collected or disseminated by BTS, and working with theoretical statistical issues concerning transportation data?

(4) Does the applicant have the professional qualifications and team members necessary for satisfactory performance of the proposed activity?

(5) How well does the technical approach and proposed costs reflect an understanding of the procedures necessary to complete the required tasks?

(6) To what degree does the proposal include cost-sharing? More weight will be given to proposals with cash contributions than in-kind services. For awards of $100,000 or more, BTS requires cash contributions of 50 percent toward the project's total estimated funding requirement.

V. Amount of Funds Available and Period of Support

We anticipate that approximately $500,000 per year will be designated to support grants, subject to the availability of appropriated funds. This estimate does not bind BTS to a specific number of offers or awards, nor to a specific amount of funding support for particular awards or awards in aggregate. It is anticipated that individual awards amounts, based upon demonstrated needs, will likely range from $50,000 to $200,000, though BTS has not established minimum or maximum funding levels.

Given the limited amount of funds available, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds. Preference will be given to applicants with cost sharing proposals from within or outside their organizations.

The period of time of awards will vary with the complexity of the project and it is possible that grants will be awarded for periods greater than one year.

VI. BTS Involvement

BTS involvement, if any, will vary by award. If you anticipate BTS involvement, you must note this in your project narrative and any support BTS provides will be specified in the award agreement. BTS will assign a liaison to serve as the primary contact regarding the grant.

VII. Terms and Conditions of Award

(1) Prior to award, each grantee will be required to complete additional government application forms, such as OMB SF–424B (Assurances—Nonconstruction Programs), and with certification requirements, such as 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-Wide Debarment and Suspension (Non-Procurement).

(2) Each grantee shall submit quarterly progress reports, a draft final report, and a final report that reflects the BTS liaison's comments.

Thank you for your interest in our Transportation Statistics Research Grants program.

Ashish Sen,

Director.

[FR Doc. 00–29571 Filed 11–17–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 908]

Availability of ATF Publication 5400.7 (Federal Explosives Law and Regulations—2000)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: General notice.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice: (1) To announce the release of ATF Publication 5400.7 (09/00), ''Federal Explosives Law and Regulations—2000'' and (2) to make certain technical corrections to that publication. The purpose of this publication is to serve as a guide to Federal explosives laws, regulations, and related information.

ADDRESSES: ATF P 5400.7 (09/00), ''Federal Explosives Law and Regulations—2000'' is available at no cost upon request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950. The publication may also be viewed at ATF's web site at: *http://www.atf.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Bill O'Brien, Public Safety Branch, Bureau of Alcohol, Tobacco and Firearms, 680 Techworld South Building, Washington, DC 20226 (202–927–7930).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is pleased to announce the release of ATF Publication 5400.7 (09/00), ''Federal Explosives Law and Regulations—2000.'' The purpose of this publication is to serve as a guide to Federal explosives law, regulations, and related information. Several changes have been made to explosives laws and regulations since the last publication.

In examining the completed publication, we observed two errors in the regulations section which need to be corrected, as follows:

1. In 27 CFR 55.218 (Table of distances for storage of explosive materials), footnote 3 at the end of the table, ''11/2 lbs.'' should be changed to read ''1½ lbs.''; and

2. In 27 CFR 55.223 (Table of distances between fireworks process buildings and other specified areas), the title heading of the table was omitted and should be added to read:

Distance From Passenger Railways, Public Highways, Fireworks Plant Buildings Used to Store Consumer Fireworks and Articles Pyrotechnic, Magazines and Fireworks Shipping Buildings, and Inhabited Buildings.[3 4 5]

In addition to the above, we wish to point out that the correct address of the ATF Out-of-Business Records Center is: 2029 Stonewall Jackson Drive, Spring Mills Office Park, Falling Waters, West Virginia 25419. The regulations at 27 CFR 55.128 (Discontinuance of business) will be amended to reflect this change in a forthcoming Treasury decision.

Approved: November 13, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–29615 Filed 11–17–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–66

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–66, Certain Payments Made Pursuant to a Securities Lending Transaction.

DATES: Written comments should be received on or before January 19, 2001.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Payments Made Pursuant to a Securities Lending Transaction.

OMB Number: 1545–1566.

Notice Number: Notice 97–66.

Abstract: Notice 97–66 modifies final regulations which were effective November 14, 1997. The notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and sale-repurchase transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 377,500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 61,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29652 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209682–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning final regulation, REG–209682–94 (TD 8847), Adjustments Following Sales of Partnership Interests, (§§ 1.732–1 and 1.743–1).

DATES: Written comments should be received on or before January 19, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Adjustments Following Sales of Partnership Interests.

OMB Number: 1545–1588.

Regulation Project Number: REG–209682–94.

Abstract: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. This regulation relates to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 226,000.

Estimated Time Per Respondent: 4 hrs.

Estimated Total Annual Burden Hours: 904,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29653 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–111–80]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–111–80 (TD 8019), Public Inspection of Exempt Organization Returns (§ 301.6104(b)–1).

DATES: Written comments should be received on or before January 19, 2001.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Public Inspection of Exempt Organization Returns.

OMB Number: 1545–0742.

Regulation Project Number: EE–111–80.

Abstract: Internal Revenue Code section 6104(b) authorizes the IRS to make available to the public the returns required to be filed by exempt organizations. The information requested in section 301.6104(b)–1(b)(4) of this regulation is necessary in order for the IRS not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 22.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29654 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form T, Forest Activities Schedule.

DATES: Written comments should be received on or before January 19, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Forest Activities Schedule.

OMB Number: 1545–0007.

Form Number: Form T.

Abstract: Form T is filed by individuals and corporations to report income and deductions from the operation of a timber business. The IRS uses Form T to determine if the correct amounts of income and deductions are reported.

Current Actions: There are no substantive changes being made to Form T at this time.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 37,000.

Estimated Time Per Respondent: 39 hr., 5 min.

Estimated Total Annual Burden Hours: 1,446,330.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–29655 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The IRS Advisory Council (IRSAC) will hold a public meeting on Wednesday, December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Candy Ryan, Office of National Public Liaison, CL:NPL, Room 7559 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–622–6440, not a toll-free number. E-mail address: public__liaison@irs.gov.

SUPPLEMENTARY INFORMATION: This notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRSAC will be held on Wednesday, December 6, 2000, from 9:00 a.m. to 4:30 p.m. in Room 3313, main IRS building, 1111 Constitution Avenue, NW., Washington, DC 20224. Issues to be discussed include: IRS balanced measures, business modernization update, filing season readiness, strategic planning & budgeting, and reports from the three IRSAC sub-groups regarding the IRS Wage & Investment, Small Business/Self Employed and Large & Mid Size Business operating divisions. Last minute changes to the agenda or order of topic discussions are possible and could prevent effective advance notice. The meeting will be in a room that accommodates approximately 50 people, including IRSAC members and IRS officials. Due to the limited space and security specifications, please call Candy Ryan to confirm your attendance. Ms. Ryan can be reached at (202) 622–6440 (not toll-free). Attendees are encouraged to arrive at least 30 minutes prior to the starting time of the meeting, to allow enough time to clear security at the 1111Constitution Avenue, NW. entrance.

If you would like for the IRSAC to consider a written statement, please call (202) 622–6440, or write to Karl W. Glover, Office of National Public Liaison, CL:NPL, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 7559 IR, Washington, DC 20224, or E-mail at public__liaison@irs.gov.

Dated: November 14, 2000.

Susanne M. Sottile,

Designated Federal Official and Director, Office of National Public Liaison.

[FR Doc. 00–29656 Filed 11–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463), dated October 6, 1972, that the Veterans' Advisory Committee on Rehabilitation has been renewed for a 2-year period beginning November 9, 2000, through November 9, 2002.

Dated: November 9, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–29613 Filed 11–17–00; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
November 20, 2000

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 567, 591, 592, and 594
Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141; Proposed Rules

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 591, 592, and 594

[Docket No. NHTSA–2000–8159; Notice 1]

RIN 2127–AH67

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend regulations that pertain to the importation by registered importers (RIs) of motor vehicles that were not manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The principal effect of these changes would be to expedite the importation of vehicles originally manufactured for sale in Canada. These proposals would require corresponding minor amendments to other regulations, which we are also proposing.

We are also proposing a number of changes in requirements for RI registration applications, RI duties, and suspension or revocation of RI registrations (49 CFR part 592). We are also proposing an amendment of our fee regulation, 49 CFR part 594, to add a new fee for processing the information that we would require from RI's who import motor vehicles from Canada under the simplified procedure we are proposing.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 4, 2001.

The final rule would be effective 30 days after its publication in the **Federal Register**.

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http//dms.dot.gov*. Click on ''Help & Information,'' or ''Help/Info'' to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, 400 Seventh St., SW., Washington, DC 20590. (202–366–5263).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background of This Rulemaking Action

A. The 1968 Importation Regulation (19 CFR 12.80)

The National Traffic and Motor Vehicle Safety Act of 1966 (''the Safety Act''), now codified as 49 U.S.C. Chapter 301 ''Motor Vehicle Safety,'' grants us authority to issue Federal motor vehicle safety standards (''FMVSS''), and to require that vehicles imported into the United States be brought into compliance with them. For the first two decades after enactment of the Safety Act, vehicles that were not originally manufactured to comply with the FMVSS were imported under a regulation we jointly issued with the United States Customs Service (''Customs''), 19 CFR 12.80, effective January 10, 1968. Under § 12.80(b)(1)(iii), a nonconforming motor vehicle could be brought into the United States permanently if its importer demonstrated to us within 120 days after entry that the vehicle had been brought into compliance with the FMVSS. Performance of the importer was secured by a Customs bond given at the time of importation. Until January 31, 1990, this was the DOT regulation that applied to the importation of noncomplying vehicles.

B. The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562)

During the 1980s, as the dollar grew stronger against European currencies, the volume of nonconforming imported vehicles also grew, peaking at 65,000 units in 1985. When Congress reviewed our importation program in the wake of this influx, it concluded that the safety of the public could be enhanced by a comprehensive revision of the laws under which nonconforming motor vehicles were imported.

On October 31, 1988, Congress enacted the Imported Vehicle Safety Act of 1988 (''the 1988 Act''). It became effective on January 31, 1990. As we explain more fully below, under the 1988 Act, a nonconforming vehicle of a specific make, model, and model year could not be admitted into the United States unless we had determined that it was capable of being modified so that it would comply with the FMVSS in effect as of the date it was manufactured.[1] Further, the importer could no longer choose any facility to perform conformance work. Such work had to be performed by, and noncomplying vehicles intended for resale had to be imported by, a ''registered importer'' (''RI''). Under the 1988 Act, a RI is an entity that we have recognized as being technically and financially capable of satisfying a number of requirements, including the ability to conform noncomplying vehicles to the FMVSS and to remedy noncompliances and safety-related defects, without charge, that exist in the vehicles that they have imported. See generally 49 U.S.C. 30141–30147 and 49 CFR parts 591–594.

During the last few years, a strong dollar has once again resulted in an unanticipated volume of imported vehicles not originally manufactured to conform to the FMVSS, this time from Canada rather than from Europe. In 1998, 76,092 noncomplying vehicles were imported into the United States, which virtually doubled in 1999, to a total of 151,842 vehicles. Approximately 99 percent of these vehicles were Canadian.

C. Vehicle Eligibility Determinations (49 CFR Part 593)

As noted above, before a nonconforming motor vehicle can be imported into the United States, we must have decided that vehicles of that make, model, and model year are capable of being modified to comply with the FMVSS. We are authorized to make such a decision on one of two bases: (1) The nonconforming vehicle is substantially similar to one whose manufacturer has certified it for sale in the United States, and it is capable of being readily modified to comply with the FMVSS, or (2) if there is no substantially similar vehicle, the vehicle's safety features comply with, or are capable of being modified to comply with, the FMVSS (see 49 U.S.C. 30141). We make these decisions upon application by a RI or a manufacturer, or on our own initiative. In all cases, we publish notices in the **Federal Register**, first to invite comment, and then to announce our decision. Each year, we also publish a list of eligible vehicles, and this also appears as appendix A to 49 CFR part 593, *Determinations That a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation.*

It has become apparent to us that many vehicles originally manufactured and certified for sale in Canada (we will refer to these as ''Canadian vehicles,'' even though some of these vehicles were manufactured elsewhere, such as the United States, and then imported into Canada) had counterparts of the same make, model, and model year in the United States that were virtually indistinguishable from them. This is due to the fact that the Canadian Motor Vehicle Safety Standards (''CMVSS'') are identical to the FMVSS in all but a few respects. To facilitate importation, we decided on our own initiative that most Canadian vehicles certified as complying with the CMVSS were ''substantially similar'' to vehicles certified as complying with the FMVSS and were therefore eligible for importation (see 55 FR 32988, August 13, 1990 and the portion of part 593, appendix A, entitled ''Vehicles Certified by Their Original Manufacturer as Complying With All Applicable Canadian Motor Vehicle Safety Standards''). By making blanket Canadian-vehicle-eligibility decisions on our own initiative, we have also facilitated international trade by removing the need for numerous individual petitions.

D. Importation of Canadian Vehicles for Personal Use

Some time ago, we simplified the procedures under which virtually-complying Canadian vehicles could be imported for personal use. We decided that the certification requirement of the Safety Act (49 U.S.C. 30115) could be satisfied by a letter from the original manufacturer of the Canadian vehicle to the importer stating that the vehicle met all applicable FMVSS except for minor labeling requirements (by this we mean such as those established by FMVSS No. 101 (a ''km'' label for a speedometer calibrated in kilometers) and the tire information placard required by S4.3 of FMVSS No. 110). On this basis, we have exempted from the RI process Canadian vehicles imported for personal use by individuals who have a *de facto* certification letter from the vehicle manufacturer. This has expedited traffic at the U.S./Canadian border and relieved a burden on importers whose Canadian cars virtually comply with the FMVSS. However, those Canadian vehicles that have not been manufactured to meet the FMVSS that are more stringent than the CMVSS, such as FMVSS No. 208, *Occupant Crash Protection,* and the dynamic crash requirements of FMVSS No. 214, Side Impact Protection, obviously cannot be covered by a manufacturer's virtual-compliance letter. Thus, such vehicles must be brought into compliance pursuant to a contract with a RI.

[1] The 1988 Act contains several exceptions under which noncomplying vehicles can be imported without going through a RI. See 49 U.S.C. 30112(b), *e.g.,* vehicles imported for temporary use, vehicles that are at least 25 years old.

II. How We Propose To Simplify the Importation Process for Canadian Vehicles Imported for Resale

We have concluded that some of the current procedures and requirements have resulted in regulatory requirements on the importation of Canadian vehicles for resale that are not necessary to implement the safety purposes of the statute. Therefore, we are proposing a number of simplifying amendments.

A. The Present Process

Nonconforming vehicles imported for resale can only be imported by a RI. The RI must enter the vehicle under a bond that guarantees that it will bring the vehicle into compliance and certify its compliance to us within 120 days after entry. 49 U.S.C. 30141(d); 49 CFR 591.8. The RI must support its certification with appropriate documentation. If we accept the certification and documentation, we inform the RI and release the bond.

Until the bond is released, the RI must not register the vehicle or license it for use on the public roads (or release it from its custody for such purposes). 49 U.S.C. 30146(a). However, if the RI has not heard from us within 30 days after submitting its certification package, it may release the vehicle. But if we advise the RI within the 30-day period that we intend to inspect the vehicle, the RI must retain custody until the inspection is completed. 49 U.S.C. 30146(c).

Failure of the RI to comply with these and other requirements can result in forfeiture of the bond, and/or civil penalty liability.

The ever-growing number of Canadian imports, the desire of RIs to turn over their inventory promptly, and the submission to and review by NHTSA of extensive compliance certification information has resulted in strains on the existing system. We have recently implemented procedures to expedite vehicle entry, and we are also working on a number of other measures, such as electronic submission of data by RIs, to improve the process. However, we believe that other improvements should be made that would require the regulatory changes proposed below.

B. How We Would Treat Canadian Vehicles Imported for Resale if the Manufacturer Has Informed NHTSA That the Vehicle Is in Virtual Compliance With the FMVSS

We have tentatively concluded that we should make it easier to import Canadian vehicles for resale that are covered by a letter from the original manufacturer indicating that they are in compliance with all applicable FMVSS except for some labeling requirements of Standards Nos. 101, 110 or 120 (and, occasionally, the daytime running lamp (DRL) specifications of Standard No. 108), the same way we have been doing for vehicles imported for personal use. Most manufacturers of Canadian-certified vehicles have informed us which of their late-model vehicles conform to the FMVSS except in minor respects. More than 99 percent of the 151,842 vehicles imported in 1999 came from Canada and 75 percent of them fit into this category. We propose to identify these virtually-conforming vehicles as ''Type 1 motor vehicles.'' However, we would require that the manufacturer's letter also include a statement of compliance with U.S. bumper and theft prevention standards. A ''Type 1 motor vehicle'' would be defined as follows:

> Type 1 motor vehicle means a motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and whose original manufacturer has informed NHTSA in writing that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards (except for the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and, if appropriate, S5.5.11 of Standard No. 108 (related to daytime running lamps)).

We propose to add an appendix A to part 592, as reflected in this notice, which would list by make, model, and model year the vehicles that would be Type 1 vehicles. We would revise that list from time to time to reflect the current circumstances.

Type 1 motor vehicles imported for resale would still have to be imported by a RI, and the RI would have to ensure they comply with all applicable FMVSS. In particular, because many Canadian vehicles have DRLs that do not comply with FMVSS No. 108 (either because they are too bright or because they are mounted higher than we permit), the RI, as today, would have to assure that the DRLs comply as manufactured, or either replace the DRL modules with compliant modules or disconnect the DRLs. In addition, the RI would have to substantiate that a Type 1 motor vehicle is not subject to any outstanding recalls or, alternatively, that all pending safety recall work has been completed. Under our proposal, a RI would not have to submit documents to us demonstrating that compliance work had been performed, but it would have to retain appropriate documentation for 10 years for our review if we asked for it. These are the same documents that importers of Type 2 motor vehicles (defined below) would have to retain, and are more specifically described in proposed § 592.6(b).

Neither a bond nor a conformity statement would have to be furnished for Type 1 vehicles. They would therefore be admitted pursuant to a new declaration added to 49 CFR part 591, specifically a new § 591.5(g) (to replace the present ''reserved'' subsection) stating that the vehicle has been manufactured and certified to conform to the CMVSS and that the manufacturer has represented to NHTSA that the vehicle conforms to the FMVSS, bumper, and theft prevention standards except for minor safety labeling requirements and, if appropriate, DRLs. Therefore, those provisions of 49 U.S.C. 30146(a), under which RIs must retain custody of vehicles for 30 days after submission of a conformance certification, or until notified by NHTSA that the bond has been released, would not apply. Type 1 motor vehicles could be released after the RI performs all necessary conformance work, affixes a certification label, and confirms that there are no outstanding unremedied safety recalls covering the vehicle. This will simplify procedures for both the RIs and NHTSA, and expedite the importation of these vehicles.

For purposes of safety recalls, the RI is the statutory manufacturer of each motor vehicle it imports or conforms. 49 U.S.C. 30147(a)(1)(B). Therefore, regardless of the Type of vehicle imported, the RI is required to assure that owners of vehicles it imports or conforms for personal use are notified of all determinations that the vehicles have a noncompliance or safety-related defect and that it can be remedied without charge. For this reason, among others, NHTSA needs to have certain information regarding all vehicles imported for resale. For Type 1 vehicles, we believe that the following information is necessary: Make, model, model year, Vehicle Identification Number (''VIN''), vehicle type, date of manufacture, and date of importation. RIs would be required to furnish this information to us on a monthly basis, not later than 10 calendar days after the end of the month in which the vehicle was imported. In addition, as noted above, RIs would have to keep records covering all importations, including documentation on the modifications that it performed to conform vehicles and substantiation of its confirmation that all outstanding safety recall work has been performed on all the vehicles that they import or conform for personal use, including Type 1 motor vehicles, and allow us to inspect these records upon our request.

Establishment of a Type 1 category represents our tentative conclusion as to how best to simplify importation from Canada of vehicles for resale. We are interested in having comments on the proposed process, whether there are additional ways in which the process could be simplified, or, alternatively, whether the simplified process proposed in this notice might compromise safety in a manner that has not occurred to us.

C. How We Would Treat Other Motor Vehicles

With respect to the remaining noncomplying motor vehicles that are not Type 1 motor vehicles, we propose to call them ''Type 2'' motor vehicles, and would define them as follows:

''Type 2 motor vehicle means a motor vehicle, other than a Type 1 motor vehicle, that is not certified by its original manufacturer as complying with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.''

In addition to the requirements set out above for safety recall work and recordkeeping for Type 1 vehicles, Type 2 vehicles would still be imported under a conformance bond, and the RI would therefore be obligated under 49 U.S.C. 30146(a) to retain custody for 30 days after submission of the conformity certification to us, unless we release the bond earlier or request an inspection.

Approximately 99 percent of motor vehicles imported last year were manufactured for sale in Canada, comply with the Canadian Motor Vehicle Safety Standards, and thus are very similar to vehicles manufactured for sale in the United States (although 24% of these vehicles would by Type 2 motor vehicles because their manufacturers have not advised us that they comply with the FMVSS). The majority of RIs have not been importing vehicles manufactured for sale in countries other than Canada. At the present time, all RIs must fulfill the same requirements. Because conformance modifications of Canadian cars are relatively simple, and a RI may not need the technical expertise required to conform vehicles manufactured for sale in countries other than Canada, we have considered whether it is feasible to establish two categories of RIs, one restricted to importing vehicles certified to the CMVSS (Type 1 and Type 2 vehicles of Canadian origin), and the other, unrestricted as at present. We are interested in having comments on this subject, which will have some relevance to the more detailed registration requirements we are proposing below.

III. Problems We Have Encountered in Administering the RI Program and How We Propose To Deal With Them

In administering the RI program, we have encountered many situations that were not anticipated when we adopted part 592 in 1989. We are proposing a number of changes to part 592 and announcing several interpretations of the statute and existing regulations, in order to address these situations and to assure that the RI program operates efficiently under the circumstances existing today.

A. Requirements for Registration and Its Maintenance (Sec. 592.5)

An entity that wishes to register as an RI must file an application with us as specified in 49 CFR 592.5(a). Moreover, at the time an RI submits its annual fee, as required by 49 U.S.C. 30141(a)(3), it must file an annual statement in which it affirms that the information provided in its application remains unchanged. 49 CFR 592.5(e).

As addressed below, based on experience gained over the years, we would require more information from a person seeking to be a RI than was originally required. Moreover, we need to obtain this additional information from each existing RI. Because a RI who was registered before the application requirements are amended cannot affirm the continuing correctness of information that it has never furnished, we have concluded that the most appropriate way to ensure that appropriate information is provided is to require existing RIs to maintain their existing registrations by providing the additional information called for by any final rule not later than 30 days after the effective date of the amended regulation. See proposed § 592.6(r).

If you wish to comment on whether we should have two categories of RI, as discussed above, we ask that you also address which items of the proposed information should be different for applicants who would be permitted to import only Type 1 vehicles and Type 2 vehicles of Canadian origin.

1. Sections 592.5(a)(3)and (5): Whether a Post Office Box or Canadian Address Is an Acceptable Address for a RI; Identification of Officer(s) Authorized To Certify Compliance to NHTSA; Identification of Applicant and Its Principals

Section 592.5(a)(3) requires the applicant to provide its ''address,'' among other information. Two issues have arisen with respect to this requirement: Whether a RI may give a post office box as its sole address, and whether a Canadian address is acceptable.

We have accepted a post office box as the sole mailing address for a RI. However, there are times when we may wish to communicate with a RI by Registered Mail, such as notification of suspension of registration, and the U.S. Postal Service requires a street address for this purpose. Also, sometimes we use overnight delivery services that cannot deliver to a post office box. Further, we need to know the actual location of each of a RI's facilities in order to assure that the RI is properly carrying out its duties and responsibilities. Without street address(es), we are unable to inspect records and vehicles as authorized by 49 U.S.C. 30146(c), or to communicate by Registered Mail. Accordingly, we want to amend § 592.5(a)(3) to require a RI applicant to provide the street addresses of all its vehicle conversion, recordkeeping, and storage facilities in the United States, and to designate one of these as a mailing address. The applicant could also give a post office box as a mailing address, provided that it is located in the same city as the designated street address. The RI would be required to affirm in its annual statement to NHTSA that these addresses remain correct and to notify us of any change in these addresses (proposed §§ 592.5(f), 592.6(l), 592.6(m)).

We have not required that principals of a RI be citizens of the United States, and we have registered several RIs who have used mailing addresses in Canada; however, we have required them to maintain facilities in the United States where conformance work is performed and records are kept. We have reviewed the question of our ability to afford RIs with mailing addresses outside the United States adequate notice and process in administrative and judicial proceedings. We have concluded that if the RI is an entity organized under the laws of any State (e.g., corporation, partnership, sole proprietorship), it may be legally served at the street address of the United States facility it has provided us, even though its principal(s) may reside at a mailing address in Canada. The question of the adequacy of service may differ, however, if the RI is an entity that is not organized under the laws of any State, that is to say, if it is a sole proprietorship, partnership, or corporation under the laws of Canada.

The statute addresses the question of service upon non-residents to the extent of specifying that a manufacturer ''offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of

notices and process in administrative and judicial proceedings may be made.'' 49 U.S.C. 30164(a). We have implemented section 30164 with 49 CFR 551.45, *Service of process on foreign manufacturers and importers.* This regulation requires ''any manufacturer, assembler, or importer of motor vehicles'' to ''designate a permanent resident of the United States upon whom service of all processes, notices, orders, decisions, and requirements may be made for him and on his behalf * * * .'' 49 CFR 551.45(a). As a RI is an ''importer of motor vehicles,'' we therefore propose to require an applicant organized under the laws of another country to file a designation of agent in the form specified in Sec. 551.45 before we register it as a RI. (proposed Sec. 592.5(a)(5)(E)). This would not relieve the RI from maintaining required facilities and records within the United States.

Given the difficulties discussed above, we are interested in having comments on whether we should not register applicants organized under the laws of another country or sole proprietors who are not citizens of the United States.

We are also proposing that an applicant identify itself, its principals, and the form of its organization and the state laws under which it is organized. We would define a ''principal'' as any officer, partner, or director of a RI, and any person whose ownership interest in a RI is 10% or more. We need to be able to identify all officers and persons with a significant ownership interest in an applicant in order to be able to decide whether an application should be granted. For example, we need to know whether such an individual has previously been associated with a RI that has been suspended or revoked. If the applicant is a corporation, we intend to require it to include a statement provided by the Secretary of State, or other appropriate official of the state in which the applicant is organized, certifying that the applicant corporation is in good standing. We would also require an applicant to provide a copy of its license or similar document to do business as an importer/modifier/seller of motor vehicles in each state or political subdivision thereof where it intends to perform such activities as a RI or, alternatively, a statement by the applicant that it has made a bona fide inquiry and is not required by state or local law to have such a license.

We propose to require the principals of an applicant to provide their dates of birth and social security numbers, which we would keep confidential. The reason for this is to allow us to determine whether any person associated with an applicant has ever been convicted of a misdemeanor or felony involving motor vehicles or the motor vehicle business, such as title fraud, odometer fraud, auto theft, or the sale of stolen vehicles. If we discover that there is such a person associated with an applicant, we could deny the application after considering the severity of the offense and the prospective role of the associate in operating the RI's business.

For reasons discussed more fully later in this notice, we are proposing to require that conformity certifications be submitted to NHTSA by a principal of the RI. This would be an officer, a partner, or the sole proprietor of the RI but not someone who is merely an employee. Therefore, we are proposing to require that the RI application identify each principal who will be authorized to sign conformity certifications submitted to NHTSA.

2. Section 592.5(a)(8): Defining ''Service Insurance Policy'' and ''Independent Insurance Company'' To Best Ensure That Owners Will Be Able To Have Noncompliances and Safety-Related Defects Remedied Without Charge

Under 49 U.S.C. 30147(a)(1)(A), a noncompliance or a safety-related defect that is determined to exist in a vehicle that is substantially similar to a vehicle imported by a RI generally is deemed to exist in the vehicle imported by the RI. Since a RI ''shall be deemed to be the manufacturer of any imported motor vehicle that the importer imports or brings into compliance * * *.'' (49 U.S.C. 30147(a)(1)(B)), the RI has the responsibility, pursuant to 49 U.S.C. 30117(b), 30118–30121, and 30166(f), to ensure that owners are notified of such noncompliances and defects and that they can be remedied without charge to the vehicle owner.

Section 30147(b) directs us to require each RI (including any successor in interest) to provide and maintain evidence of sufficient financial responsibility to meet the above-referenced obligations. To implement section 30147(b), we currently require a RI applicant to submit to us a copy of a contract to acquire (or a copy of the policy itself) a prepaid ''mandatory service insurance policy underwritten by an independent insurance company,'' in an amount that equals $2,000 for each motor vehicle for which the applicant will furnish a certificate of conformity to the Administrator. Section 592.5(a)(8). In addition, we require each RI to maintain such an insurance policy in effect. Section 592.6(i). The purpose of these requirements is to ensure that each RI will have the financial capability to remedy any noncompliance or safety-related defect that exists in the vehicles it has imported, and to ensure that owners have a financial recourse if the RI does not perform, or if the RI is no longer in business.

In 1989, when we originally adopted this provision, we were guided by the experience of the Environmental Protection Agency (EPA), which had a similar provision addressing the financial capability of Independent Commercial Importers (ICIs) (i.e., entities that conform imported vehicles to EPA's emissions requirements) to honor emissions warranties (40 CFR 85.1510(b)(2)(I)). Equipment, vehicle, and engine manufacturers, and the California Air Resources Board (CARB), had suggested that ICIs acquire prepaid insurance and/or bonds to cover warranty and recall liability for the useful life of each vehicle. Without a requirement for an insurance policy or bond to cover warranty and recall repairs, owners of vehicles obtained from firms that are no longer in business would have to bear the repair costs.

EPA decided to require a prepaid ''mandatory service insurance policy'' that, in effect, assures effective warranty coverage. Following EPA's lead, and because the prepaid mandatory service insurance policy seemed to be an acceptable means of assuring the ICIs' performance with respect to warranties and emissions recalls, we required RIs to have a similar insurance policy covering the vehicles it imports, rather than post a recall bond.

We now understand that the mandatory service insurance policies under the Clean Air Act are intended to cover only those parts installed, and modifications performed, to satisfy the emissions requirements of that statute. Thus, the policies are financial guarantees or warranties of the work actually performed by the ICI. The purpose of the NHTSA requirement, on the other hand, is not to provide warranty coverage of compliance work performed by the RI, but to ensure that a vehicle owner will be compensated if the RI responsible for the vehicle is unable to provide a remedy without charge for all noncompliances and safety defects that exist in the vehicle, not just those related to the conformance work performed by the RI. Assuming that service insurance policies are effective and workable, we do not believe that this difference justifies a substantially different approach, such as a surety bond, from the course of action we have followed

for over a decade. However, to ensure that the current approach adequately protects owners, we are proposing to make certain changes, as described below.

When the 1988 Act became effective in 1990, we discovered that no established insurance company would issue a ''mandatory service insurance policy.'' However, American Consumer Service Corporation (ACSC) was willing to issue a ''Warranty Policy.'' After review, and in light of the unavailability of insurance products as originally intended, we decided to accept the warranty while the insurance remained unavailable, and ACSC has been the principal issuer of these policies to RIs. Within the past two years, other entities have been issuing similar ''warranty policies.'' However, we are concerned about the financial capability of the issuers of these policies to honor them. Some of the issuing companies do not appear to be recognized as insurance companies by the states in which they are located, and it is not clear whether there are state requirements regarding the adequacy of their financial reserves, etc. Moreover, we are unsure of how ''independent'' they may be of the RIs to which they furnish the policies.

Aware of our concern about stand-alone warranty policies, in the fall of 1999 ACSC persuaded the National Warranty Insurance Company Risk Retention Group to underwrite the warranty policies it issues, and Signet Star Reinsurance Company to act as the reinsurer. These two companies are registered by the state of Nebraska to conduct an insurance business. At this time, we intend to rely on these safeguards for the warranty policies issued by ACSC.

We have informed companies other than ACSC that are issuing warranty policies that they must be backed by a guarantee of performance similar to that above, either by becoming insurance companies that meet the requirements of State law if they are not already, or by having the policies they issue underwritten by a recognized insurance company. We have also informed them that such policies must be issued by a truly independent company, e.g., one in which no RI or any of its officers, directors, employees, or shareholders has a financial interest and in which no legal relation (e.g., relative) of a RI's officers, directors, shareholders or employees is employed.

While in this notice we are not proposing to change Sec. 592.5(a)(8), we are proposing to add definitions of the terms ''service insurance policy'' and ''independent insurance company'' to address our concerns.

A ''service insurance policy'' would be defined as any policy issued or underwritten by an independent insurance company which covers a specific Type 1 or Type 2 motor vehicle and guarantees that any noncompliance with a Federal motor vehicle safety standard or safety-related defect determined to exist in that vehicle, will be remedied without charge to the owner of the vehicle. An ''independent insurance company'' would be defined as an entity that is registered with any State and authorized thereby to conduct an insurance business, none of whose affiliates, shareholders, officers, directors, or employees, or in affinity with such, is employed by, or has a financial interest in or otherwise controls or participates in the business of, a RI to which it issues or underwrites such policies. The phrase ''in affinity with such'' includes but is not limited to family members.

We note, also, that some RIs are furnishing policies limited to coverage of vehicles originally manufactured for sale in Canada. These policies are not valid for vehicles manufactured for sale elsewhere, and we will not accept these restricted policies for compliance certification submissions for Type 2 vehicles of other than Canadian origin.

We are also interested in having comments on whether there might be an alternative, simpler means of ensuring that owners of vehicles imported by RIs will be able to have recalls performed, such as the provision of a bond in a certain amount (e.g., 5% of the dutiable value of the vehicle).

3. Section 592.5(a)(9): Capability of an Applicant To Perform Conformance Work

The original ''gray market'' provisions of the Safety Act emphasized the responsibility of the importer to bring its imported nonconforming vehicles into compliance, but the Act was silent regarding the qualifications of the importer/modifier. In the 1988 Act, Congress rejected the 20-year practice of leaving conformers of motor vehicles unregulated, and enacted a statutory scheme under which only RIs may import noncompliant vehicles for resale. The statute directed NHTSA to establish procedures and requirements that, among other things, ensure that the RI ''will be able technically'' to carry out conformance and recall repair work. 49 U.S.C. 30141(c)(1)(C). This was intended to reassure the public that a Federal agency had reviewed the qualifications of a person to bring vehicles into compliance with the FMVSS and to repair vehicles covered by safety recall campaigns. (Of course, the fact that an entity has become a RI should not be interpreted or represented as our ''approval'' of a RI; it simply means that the RI has met the requirements of the statute and regulations.)

As reflected in 49 CFR 592.5(a)(9), we currently require an applicant to demonstrate that it will be ''technically able (to remedy a noncompliance or safety-related defect) through repair.'' However, the regulation does not address the technical ability of the applicant to conform vehicles or the sufficiency of its facilities to do so. Therefore, we are proposing to amend § 592.5(a)(9) to correct this oversight by requiring an applicant to submit information sufficient to demonstrate to us that it has technical ability to bring vehicles into compliance with safety, bumper, and theft prevention standards, and to perform recall repairs on vehicles, such as its experience repairing vehicles and the qualifications of its personnel.

To demonstrate ownership or leasing of facilities adequate for the conformance, repair, and storage of vehicles, under § 592.5(a)(9)(B), an applicant would have to provide a copy of the lease agreement or ownership document relating to that facility. We are also proposing that the applicant provide a copy of a license or other similar document issued by an appropriate local authority permitting the applicant to do business as an importer, or modifier, or seller of motor vehicles, or, alternatively, a statement by the applicant that it has made a bona fide inquiry and is not required by state or local law to have such a license.

We are authorized to inspect the conformance, storage, and record-keeping facilities of an applicant to assist us in deciding on a RI application. 49 U.S.C. 30141(c)(1)(B). In some instances, we have conducted an on-site inspection to judge the technical competence of an applicant; in others, we have relied on the description provided in the application. To reduce the need to conduct on-site inspections and to expedite the process, we are proposing to require an applicant to submit photographs in non-electronic form, with street addresses, of each of its lots and garages; i.e., the facilities where vehicles would be conformed and stored prior to their release and remedied in safety recall campaigns.

If you are commenting on the feasibility of a two-tier RI system, your comments on this section of our proposal would be particularly pertinent.

4. Section 592.5(a)(11): Ensuring That an Applicant Understands Its Duties

At present, Section 592.5(a)(11) requires an applicant to state that it will fully comply with the duties of a RI as set forth in § 592.6. We are proposing additions to and clarifications of the duties of a RI. In this light, we are proposing an amendment of § 592.5(a)(11) to require an applicant to state that it has read and understood the duties of a registered importer as set forth in 49 CFR 592.6 and that it will fully comply with each such duty.

5. Section 592.5(b): Incomplete Applications

Under the present regulation, if the information submitted is incomplete, the Administrator notifies the applicant of the areas of insufficiency and that the application is in abeyance.

We propose a clarification under which the Administrator would notify the applicant of the ''information that is needed,'' and that the Administrator will not give further consideration to the application until the information is received.

6. Section 592.5(e): Denial of Applications

We would remove from present § 592.5(d) and place in a new subsection (e) material on denial of applications and refunds of certain components of the initial annual fee.

At present, the regulation states only that ''If the information [in the application] is not acceptable, the Administrator informs the applicant in writing that its application is not approved.'' We are proposing to expand this in several ways.

We currently require an applicant to state that it has never had a registration revoked pursuant to § 592.7 (§ 592.5(a)(6)). We would continue this requirement and we would restate section 30141(c)(3) as well by specifying that we shall deny registration to an applicant whose registration has previously been revoked.

We also currently require an applicant to state that it is not and was not ''directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked'' (§ 592.5(a)(6)). We would also continue this requirement and refer to the portion of section 30141(c)(3) that specifies that we may deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, a RI whose registration has been revoked. For example, if we revoke the registration of a corporate RI which had four officers, we would deny registration to an applicant in which any one of the four individuals, or specified family members, is involved.

Under the current regulation, each RI's application must include the ''names of all owners, including shareholders, partners, or sole proprietors'' (§ 592.5(a)(4)), and, if an owner is a corporation, ''the names of all shareholders of such corporation whose ownership interest is 10 percent or greater'' (§ 592.5(a)(5)). The RI is required to inform us of any change in the ownership information it has provided (§ 592.5(f)). Thus, under the present regulation, there is some information that can be used to compare the ownership interests of a RI whose registration has been revoked with those of an applicant. However, the present regulation, in our view, is not sufficient to cover situations where an application is filed by person(s) that may be influenced by a revoked RI, or its shareholders, principals, partners, or employees, and whose name may not have appeared on that RI's application. For example, this would include a spouse, in-law, child, partner, substantial shareholder, or employee. Thus, we would also require an applicant to state whether any of its shareholders, officers, directors, employees, or in affinity with such, had been previously affiliated with a RI in any capacity (e.g., major shareholder, partner, participant in the business), and, if so, to state the name of the RI and the capacity.

We would provide that denials shall be in writing and shall include the reasons for the denial. Applicants would be authorized to submit a petition for reconsideration of the denial within 30 days.

7. Section 592.5(f): The Due Date for the RI's Annual Fee

Present subsection (e) would be redesignated subsection (f). Under 49 U.S.C. 30141(a)(3), we are directed to establish, and a RI must pay, an annual fee ''to pay for the costs of carrying out the registration program for importers * * *.'' Such fees are specified in 49 CFR 594.6. Section 592.5(e) currently requires a RI to provide with this fee an annual statement that affirms that certain of the information provided in its original application ''remains correct.''

The annual fee covers a fiscal year, October 1 through September 30 of the year following. At present, the fee, along with the affirmation statement, must be filed and paid not later than October 31 of each year. This is a month after the beginning of the fiscal year. Moreover, § 592.7(a) now provides that we may not revoke or suspend a registration until the 31st calendar day after an unpaid fee is due and payable. The 31st calendar day after October 31 is December 1. This means that a RI that does not pay its annual fee has a ''free ride'' to continue to operate for two months into the fiscal year.

To address this anomaly, we want to amend the present provisions to require payment of the annual fee, and submission of the annual affirmation statement, not later than September 30 of each year, to cover the next fiscal year. In addition, as discussed in more detail below, we are proposing to amend § 592.7(a) to specify that we may automatically suspend an RI's registration if the annual fee has not been paid by the close of business on October 10 or, if October 10 is a weekend or a holiday, the next business day.

8. Transfer of Current Section 592.5(f): Notification of Change of Information in a RI Application

Under current § 592.5(f), a RI must notify us within 30 days of any change in the information provided in its application. This duty is more appropriately located in § 592.6, and we are proposing to transfer it to a new § 592.6(m).

9. Section 592.5(h): Treatment of Applications Pending on Effective Date of the Final Rule

We may have received, but not acted upon, registration applications that are pending when the final rule based upon this proposal becomes effective. Under proposed subsection (h), if the application does not contain all the information that will then be required by § 592.5(a) as amended by the final rule, we would notify the applicant of the additional information required by the new rule and inform it that we are deferring further consideration of its application until the information is received.

B. Duties of a Registered Importer (§ 592.6)

The duties of a RI are set forth in § 592.6. Upon review, we have tentatively decided that several provisions in that section should be amended or clarified, and that several more need to be modified to reflect the establishment of different Types of motor vehicles. Therefore, we propose revising § 592.6 in its entirety.

The present duties imposed by § 592.6 may be summarized as follows, by their subsection:

(a) Bond requirements;
(b) Record-keeping;
(c) Conformance records after initial certification for same make, model, and model year has been submitted;
(d) Certification of conformed vehicles;
(e) Certification to NHTSA;
(f) Substantiation of certification;
(g) Obligation to notify and remedy;
(h) Requirement to admit NHTSA representatives for inspection;
(i) Maintenance of prepaid mandatory service insurance policy; and
(j) Obligation upon failure to conform vehicles.

Under our proposed revision, we would adopt the following structure of subsections for § 592.6:
(a) Conformance and bond requirements;
(b) Recordkeeping;
(c) Certification of conformed vehicles;
(d) Certification documentation to be submitted to NHTSA for Type 2 motor vehicles;
(e) Information to be submitted to NHTSA for Type 1 motor vehicles;
(f) Acts prohibited before bond release;
(g) Furnishing the service insurance policy with the vehicle;
(h) Odometer disclosure requirements;
(i) Obligation to export or abandon a vehicle upon failure to conform it;
(j) Obligation to provide notification of and remedy for safety-related defects and noncompliances, and to submit related reports to NHTSA;
(k) Requirement to admit NHTSA representatives for inspection;
(l) Requirement to provide an annual statement with fee;
(m) Notification to NHTSA upon change of information provided in application; prior notice of change of facility.
(n) Assurance that at least one full-time employee is present at each facility;
(o) Prohibition against co-utilization of employees, or conformance, repair, or storage facilities with any other RI;
(p) Timely response to NHTSA information requests;
(q) Timely payment of fees; and
(r) provision not later than 30 days after effective date of final rule of information required of new RI applicants.

1. Section 592.6(a): Duties To Ensure Conformance of All Imported Vehicles With Safety, Bumper, and Theft Prevention Standards and To Furnish a Conformance Bond for Type 2 Motor Vehicles

Under current § 592.6(a), a RI has the duty to ''furnish to the Secretary of the Treasury (acting on behalf of the Administrator)'' a bond to assure that it will bring a nonconforming vehicle into conformity with the FMVSS within 120 days of entry. Literally speaking, this is a duty to furnish a bond only, and not, by its terms, a duty to conform the vehicle, which exists in the statute. We believe that subsection (a) should be amended to encompass both duties, and a third duty as well: To assure that any vehicle that a RI imports has been deemed eligible for importation by the Administrator pursuant to part 593. The duty to conform the vehicle would include conformance to Federal bumper and theft prevention standards if they applied to the vehicle.

Although we believe that 120 days is not required for the relatively minor or straightforward modifications needed to bring Type 2 motor vehicles of Canadian origin into compliance with applicable standards, we are not currently proposing to reduce this period and the present 120 days would continue to apply to Type 2 motor vehicles. However, we welcome comments on whether such a reduction for Canadian Type 2 vehicles would be appropriate, and, if so, an appropriate period.

Until now, part 592 has been silent on the RI's responsibility to ensure conformance with the theft prevention standard, though the matter is addressed in part 567, the certification regulation. It is a violation of Federal laws to import motor vehicles that do not comply with safety and bumper standards, but in each case the statutory prohibition does not apply if the vehicles have been determined to be capable of complying and are brought into conformity after importation (See 49 U.S.C. 30112, 30146, and 32506). It is also a violation of Federal law to import a vehicle that does not comply with the theft prevention standard (see 49 U.S.C. 33114), but section 33114 provides no exceptions. Thus, until now, we have interpreted section 33114 as requiring a vehicle to meet the theft prevention standard at the time of entry, and have not allowed post-entry conformance. We have implemented this through our certification regulation (49 CFR part 567): If a RI imports a passenger car or multipurpose passenger vehicle from a line listed in appendix A of 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard,* and the original manufacturer has not affixed a label meeting the requirements of § 567.4(k), the RI is required to inscribe the Vehicle Identification Number on certain parts (§ 541.5(b)(3)), and to affix a label meeting these requirements before the vehicle is imported (§ 567.4(k)). We recognize, however, that it may be difficult to mark parts or to take other actions needed to certify compliance with the theft prevention standard outside the United States.

The purpose of the theft prevention standard ''is to reduce the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles'' (§ 541.2). We view it as highly unlikely that an imported vehicle subject to the theft prevention standard would be stolen while in the custody of a RI. We have tentatively concluded that the purpose of the standard would not be compromised by allowing a RI to bring a vehicle into compliance after its entry, when it is conforming and certifying vehicles to the safety and bumper standards, and we are proposing an amendment of § 567.4(k) to permit this.

In accordance with our views, we propose that a RI, as part of its Type 1 information submission or as part of its Type 2 certification, include a statement that the vehicle is not subject to the parts marking requirements of the theft prevention standard, or, alternatively, that the vehicle conforms to these requirements. The submission would also have to indicate whether the vehicle conformed as originally manufactured or whether the RI brought it into conformity.

2. Section 592.6(b): Recordkeeping Requirements

For the most part, existing recordkeeping requirements will be retained. Our proposed amendment to Sec. 592.6(b) would clarify that record-keeping requirements apply to importations of Type 1 motor vehicles as well as to importations of any vehicle for which a RI furnishes a certificate of conformity to NHTSA (this includes vehicles imported for personal use conformed under contract, as well as vehicles that the RI imports for resale). We also want to clarify that all records must be kept as hard copies (not electronically) at the facility in the United States identified by the RI in its application. The records would include copies of certifications of conformity submitted to NHTSA covering Type 2 motor vehicles, and information furnished covering Type 1 motor vehicles. The use of the term ''the facility'' means that all required records must be stored at a single location.

A primary purpose of record-keeping is to provide a ready means of identifying vehicles for which a RI is responsible for providing remedy without charge in the event of a defect or noncompliance determination. The period of free remedy was recently

increased by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (PL 106–414, effective November 1, 2000) from 8 to 10 years. Accordingly, Sec. 592.6(b) will be amended in the near future to specify that a RI shall retain the required records for 10 years, rather than for 8 years, as is presently required. This amendment is reflected in proposed 592.6(b).

3. Section 592.6(c): Whether a Person Other Than the RI May Affix a Certification Label to a Vehicle After It Is Conformed; Whether the Certification Label May Be Affixed Outside the United States

Under 49 U.S.C. 30146(a)(3), ''each registered importer shall include on each motor vehicle * * * a label prescribed by the (Administrator) identifying the importer and stating that the vehicle has been altered by the importer to comply with the standards applicable to the vehicle.'' We implemented this section by present § 592.6(d), which requires the RI, upon completion of compliance modifications, to permanently affix a certification of compliance to the vehicle that meets the general vehicle certification requirements of 49 CFR part 567, and to provide a photograph of the label to us. These requirements would be continued in proposed § 592.6(c), and modified as discussed below.

Two questions have arisen with respect to gray market vehicle certification: Who may affix the certification label, and whether the certification label may be affixed outside the United States if compliance work is completed before importation.

In a recent instance, we discovered that a RI had not taken possession of the vehicles it had imported and was shipping its certification labels to a customer without having actually seen the cars it was purporting to modify and certify. We had made it clear, in the preamble to the final rule adopting Part 592, that a RI may not contract to have another person conform a vehicle for which it is the importer of record (54 FR 40063 at 40066). For similar reasons, it is improper for a RI to delegate the responsibility to affix the certification label.

In every instance, the proper course of action for a RI is to take physical possession of a vehicle, then perform all necessary conformance modifications at a facility identified to NHTSA, and permanently affix the certification label on the vehicle at the conformance facility at the end of the modification process. We would therefore add to proposed Sec. 592.6(c) the requirement that all conformance work be performed at a facility identified to NHTSA for that purpose and that the certification label be permanently affixed at that facility after all appropriate modifications are performed on the vehicle.

We have not allowed pre-importation certification of motor vehicles that have been conformed by persons other than their original manufacturers. Congress intended to provide us with a review function to ensure that nonconforming vehicles are properly conformed by responsible entities. To allow certification outside the United States by someone other than the original manufacturer would allow these vehicles to be imported as ''complying'' vehicles, outside of the RI process, which would be inconsistent with the purpose and structure of the 1988 Act. We intend to continue this policy. Therefore, we specify in proposed § 592.6(c) that certification labels may be affixed only in the United States. However, we wish to clarify that a RI may perform conformance modifications and recall remedy repairs outside the U.S. before importation, provided that the RI has imported the vehicles before the label is permanently affixed and before it submits the relevant compliance information to NHTSA.

4. Sections 592.6(d) and 592.6(e): Documentation That a RI Must Submit to NHTSA

Currently, § 592.6(f) specifies a limited amount of information that must be submitted to NHTSA with the RI's conformance certification. However, it provides that the RI must also submit ''such information, if any, as the Administrator may request.'' Over the years, we have identified a number of other items that we need to effectively administer the RI importation program, and we have advised the RIs of these items through newsletters and direct communications. We will continue to require this information (with one exception discussed below) for Type 2 motor vehicles, and we have decided that it would be more appropriate to identify these items in § 592.6 rather than rely on informal communication with RIs.

Therefore, we are proposing a new § 592.6(d), which would specify that the initial certification conformance package submitted to NHTSA for a Type 2 motor vehicle contain (A) the make, model, model year and date of manufacture, odometer reading, VIN meeting the requirements of 49 CFR part 565, and Customs Entry Number, (B) a statement that the RI has brought the vehicle into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and a description, with respect to each standard for which modifications were needed, of how it has modified the vehicle, (C) a copy of the bond given at the time of entry to ensure conformance, (D) the vehicle's vehicle eligibility number, (E) a copy of the HS–7 form executed at the time of its importation if a Customs broker did not make an electronic entry with Customs, (F) true and unaltered front, side, and rear photographs of the vehicle, (G) true and unaltered photographs of the original manufacturer's certification label and the certification label of the Registered Importer permanently affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the Registered Importer certification label before it has been affixed), (H) documentation including photographs sufficient to demonstrate conformity, and (I) the policy number of the service insurance policy furnished with the vehicle pursuant to § 592.6(g).

A RI's second and subsequent certification submissions for a given make, model, and model year Type 2 motor vehicle would normally need to contain the same information as its first submission, including the conforming VIN of the vehicle covered, and would have to refer to its first submission. However, if the RI conformed the vehicle in the same manner as it stated in its initial submission, the RI may say so in a subsequent submission, and it need only provide photographs and other documentation of the modifications that it made to achieve conformity.

Currently, we require RIs to submit a copy of the actual service insurance policy that applies to each vehicle with the certification conformance package for the vehicle. We have tentatively concluded that this is not necessary, as long as the RI submits the insurance policy number or other identifying information so that we have a record in case the owner of the vehicle needs to utilize the policy. We would continue to require the RI to retain a copy of the policy in its records.

Section 592.6 does not currently address a RI's duties with respect to pending recalls on vehicles for which it is responsible under the statute. In recent years, we have required RIs to include a statement in each certification conformity package that there are no outstanding recalls (i.e., recalls for which the remedy had not been performed). However, we have found that some RIs were not actually checking to see if this was true and that

in some cases vehicles were being released to the public with unremedied noncompliances and safety defects. Because of the clear adverse impact that this practice has on safety, we are proposing to require that RIs substantiate that there are no unremedied defects or noncompliances applicable to any vehicle that it imports or conforms. We would require that a RI submit substantiation that, at the time of submission of its certification of conformity under § 592.6(d) or the required information under § 592.6(e), the vehicle is not subject to any safety recall campaigns being conducted by its original manufacturer (or its U.S. subsidiary) in the United States, or, alternatively, that all noncompliances and defects covered by those safety recalls have been remedied.

Such substantiation would normally be in the form of a document issued by the original manufacturer or a franchised dealer of that manufacturer stating that there are no recalls pending that apply to the vehicle for which the remedy work has not been performed. If the manufacturer's records indicated that there were one or more recall campaigns for which the remedy had not been performed, the RI would have to submit repair records demonstrating that the remedy work had been performed prior to release of the vehicle. We would like comments on whether it would be sufficient to merely require the RIs to maintain this substantiation in their records, or whether they should be required to submit it to us along with the other required information.

For Type 1 motor vehicles, we would adopt a new § 592.6(e) requiring the submission of much less documentation than is currently required, and much less than would be required for Type 2 motor vehicles. The required information would include the make, model, model year, odometer reading, VIN that conforms to 49 CFR part 565, date of manufacture, Customs entry number, the name of the insurance company and the policy number of the service insurance policy to be provided with the vehicle, and substantiation that there are no pending safety recalls for which the remedy work has not been performed. The RI would be required to provide this information on a monthly basis so that we receive it within 10 calendar days after the end of the month in which the vehicle was imported.

We are moving in our administration of import procedures to allow the electronic submission of certain conformance documentation. However, we need to assure ourselves that all photographic information is authentic. Current technology is sufficiently advanced that it is easy to alter photographs. We therefore have proposed to require that certain photographic information submitted for Type 2 motor vehicles, and retained for all vehicles conformed by RIs, be in true and non-altered form: specifically, views of the vehicle speedometer/odometer displays and the RI label and certification labels on the doors. As in the current regulation, for motorcycles, the RI would also have to submit a true and unaltered photograph or a photocopy of the label itself, flat, to allow readability, as well as of the label as affixed to the motorcycle crossbar.

Section 592.6(e) currently requires a RI, after it has completed bringing a vehicle into conformity, to certify to NHTSA that the vehicle complies with all applicable FMVSS, ''and that it is the person legally responsible for bringing the vehicle into conformity.'' In some recent instances, RIs have purported to certify vehicles without any knowledge or exercise of management control over the process. For example, certification to NHTSA has been provided by individuals, hundreds of miles away from the vehicles, who have been granted a power of attorney from the RI. In another instance, we informed a RI that we would not accept certifications to us from appointed individuals resident in Canada. In our view, certification to NHTSA is a responsibility that must not to be delegated by a RI to someone who has no personal knowledge of the relevant information. We therefore are proposing in new § 592.6(d) that the certification to NHTSA required for Type 2 motor vehicles can only be signed by a principal of the RI, who must attest to personal knowledge that the RI has performed all work required to bring the vehicle into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. As noted above, the identity of the principal authorized to make this certification must be stated in the RI application or subsequent filings with NHTSA pursuant to § 592.6(m). Certification to the Administrator would have to be personally signed and not be a signature that is stamped or otherwise mechanical in origin. The submission to the Administrator would have to identify the facility where the conformance work was performed, and the location where the vehicle may be inspected.

Similarly, the information furnished to us for Type 1 motor vehicles would have to be submitted by a principal of the RI.

Finally, we want to add a word of caution. For many years we have accepted a RI's certification in the form of a check list that allows the RI to indicate whether the vehicle was originally manufactured to conform with a specific standard (by checking a column headed ''O''), or modified by the RI to conform to the standard (by checking a column headed ''M''), or that the standard is inapplicable (by checking a column headed ''N/A''). There have been times in their haste to certify that RIs have inaccurately checked the box of a standard that does not apply to the vehicle, or indicated that the RI modified the vehicle when the vehicle, in fact, was originally manufactured to comply, or indicated that a standard did not apply when it did. These inaccuracies call into question the accuracy of the remaining certifications. We wish to advise RIs that we may reject such certifications and return such submissions to the RI. We will also return submissions that are incomplete. If a submission is returned to a RI, we would charge to the RI the costs associated with the return. Return would not toll the 120-day period submitting compliance information as provided under § 592.6(a). Further, if a RI has certified that it has modified a vehicle, whether by checking an ''M'' box or otherwise, and we discover that it has not in fact modified the vehicle, we will consider that to be a knowingly false certification within the meaning of 49 U.S.C. 30115 and 30141(c)(4)(B), and grounds for automatic suspension of a RI registration, as discussed below. To bring greater accountability to the certification process by encouraging RIs to complete their certification in a careful and thorough manner so that NHTSA may expedite its certification review, we propose to add appropriate language to paragraph (d) to address these issues.

We seek comments on whether a registration ought to be suspended, either automatically or non-automatically, if a RI continues to submit inaccurate or incomplete certifications over a period of time.

5. Section 592.6(f): Acts Prohibited Before Expiration of 30 Days After Submission of Compliance Statement or Release of the Conformance Bond

A RI may license or register an imported motor vehicle for use on public roads, or release custody of a motor vehicle to a person for license or registration for use on public roads ''only after 30 days after the registered importer certifies (to NHTSA) that the motor vehicle complies [with applicable FMVSS].'' 49 U.S.C. 30146(a)(1). We

have construed this provision to allow a RI to license or register a vehicle, or release custody of a vehicle, for use on the public roads less than 30 days after receipt of the conformance package if we have notified the RI that the conformance bond required by 49 U.S.C. 30141(d) has been released.

We have tried to accommodate RIs by reducing data-submission requirements for Canadian vehicles, and expediting the process by releasing the conformance bonds. During this year, we have released those bonds within an average of five working days. However, despite these short processing times, we have discovered that in some instances vehicles imported from Canada have been shipped directly to auction houses or dealers and sold within days after entry, before bonds were released, and in some instances, even before we had received the vehicle's certification of conformity from the RI.

The RI's duty to retain ''custody'' of the vehicles is a statutory requirement that has not been explicitly implemented previously in part 592 even though it is one of the conditions of the performance bond required by part 591 and its Annex A. To eliminate any possible confusion, we want to clarify this statutory requirement.

Issues have arisen as to whether the retention of ''custody'' requires a RI to maintain physical possession of a vehicle at one of its own facilities, pending bond release. It has been our view that, at a minimum, we need to know the location of a vehicle to be able to inspect it during the period before we release the bond, and to have the same access to the vehicle as if it were stored at the RI's own facility. In addition, title to the vehicle must not have passed from the RI to any U.S. entity before bond release so that we can be certain that a RI will be able to fulfill the bond condition to export or abandon the vehicle if NHTSA does not release the bond. See letters of April 17, 2000, from Frank Seales, Jr., to Philip Trupiano, and of April 19, 2000, from Kenneth N. Weinstein to John Dowd et al.

As noted before, 75 percent of Canadian vehicles imported are Type 1 motor vehicles. Under today's proposal, the custody issue would no longer arise with respect to Type 1 motor vehicles, since they would enter free of bond requirements. However, they remain relevant to Type 2 motor vehicles.

With respect to Type 2 motor vehicles, we are proposing to adopt requirements that parallel those of EPA with respect to emissions requirements established under the Clean Air Act to ensure that the RI retains physical possession of a vehicle at its own facility pending bond release. Under EPA's regulation, during the period of ''conditional admission'' before EPA issues a certificate of conformity and a vehicle is released, the importer may not operate the vehicle on the public roads, sell or offer it for sale, or store it on the premises of a dealer. 40 CFR 85.1513(b). We believe that these restrictions would be appropriate for Type 2 motor vehicles, including those of Canadian origin that are not Type 1 motor vehicles. Thus, if a RI imports a Type 2 motor vehicle from Canada (or elsewhere) and sells it at any time before the end of the 30-day hold period or before the bond had been released, whichever first occurs, or stores it on another's lot, or allows it to be operated on the public roads, a violation will have taken place for which sanctions may be imposed. We recognize that this approach could affect present practices of some RIs with respect to some Canadian vehicles, but we believe that it is a necessary safeguard for vehicles not covered by a letter from their manufacturer that would qualify them as Type 1 motor vehicles.

In addition to the restrictions that parallel EPA's, we are also proposing language that tracks the statutory prohibitions against premature licensing or registering of a Type 2 motor vehicle for use on the public roads, or release of custody to any person for such purposes.

In line with our past interpretations, we propose to continue to permit a RI to obtain title in its own name to the vehicles that it imports for resale, either before or after importation, but we shall not allow the RI to title it in the name of any other entity (such as a title clearer, dealer or a retail purchaser) until after we have released the bond. This is designed to ensure that the RI retains the ability to export or abandon the vehicle to the United States, upon demand by the United States, for its failure to conform the vehicle.

Since Type 1 vehicles would be admitted free of bond, we seek comments on whether title restrictions are appropriate for them.

6. Section 592.6(g): Duty To Provide Copy of the Service Insurance Policy With Each Vehicle

We propose requiring that a RI provide a copy of the service insurance policy (guaranteeing that a remedy will be provided without charge to the vehicle owner in the event of a safety recall) with each vehicle it imports not later than the time the RI sells the vehicle. When a RI has conformed a vehicle imported for personal use, the RI would have to provide a copy with the vehicle not later than the time it releases custody of the vehicle to its importer-owner. Finally, on a monthly basis, a RI would have to provide to the insurance company issuing the policies the VINs of each vehicle covered by a policy, retaining a copy of this correspondence in its files. We are adding this duty to ensure that the purchasers of all gray market vehicles are aware of their ability to use this policy to have safety recall work done at no charge to them, and to ensure that the issuers of the policies are informed of the number and identity of the vehicles that their policies cover.

7. Section 592.6(h): Duty To Provide and Retain Copies of Odometer Disclosure Statements

We wish to call attention to an obligation that another statute imposes upon persons who sell vehicles. Pursuant to 49 U.S.C. 32705 and 49 CFR part 580, *Odometer Disclosure Requirements,* a person transferring ownership of a motor vehicle must provide an odometer mileage disclosure statement to the transferee. Dealers and distributors, such as a RI who imports vehicles for resale, must also retain a copy for five years (49 CFR 580.8(a)). We want to reiterate these obligations in part 592, so that a RI which focuses principally on 49 CFR parts 591–594 does not miss this requirement. Also, a failure to comply with these requirements would be a violation of this Part.

8. Section 592.6(j): Duty To Remedy Noncompliances and Safety-Related Defects, and To Provide Reports Regarding Recalls

As discussed above, each RI is statutorily responsible for conducting safety recalls in the vehicles that it imports or conforms. 49 U.S.C. 30147(a)(1). Section 592.6(g) currently specifies certain of a RI's responsibilities with respect to recalls, but it does not address all relevant issues.

As currently written, § 592.6(g) is primarily directed toward recalls that are announced after a vehicle has been released by the RI and is already in the possession of an owner, and does not address recalls that apply to imported vehicles at the time they are imported. To assure that there is no misunderstanding about the duties of a RI under the latter circumstances, we have proposed to amend §§ 592.6(b), (c), (d), and (e) to explicitly require a RI to assure that all recall remedy work has been performed. (Information about recalls is available from a variety of sources, including the vehicle

manufacturers, their dealers, and NHTSA's Internet Website: www.nhtsa.gov/cars/programs/recalls. Whether the recall work has been performed on a specific vehicle often can be determined by inspecting the vehicle or by reviewing its repair records. This information is always available from the manufacturer and usually from the manufacturer's franchised dealers).

We are also proposing amendments addressing a RI's responsibilities for recalls that are announced after the vehicle has been certified by the RI. These duties already exist by virtue of section 30147(a)(1). However, some RIs apparently have not attended to their obligations in this regard. To further emphasize these obligations, we propose to restate them in Part 592.

Current § 592.6(g) requires the RI to provide notification and remedy ''with respect to any motor vehicle for which it has furnished a certificate of conformity.'' As discussed above, we would no longer require submission of a ''certificate of conformity'' for Type 1 motor vehicles, but would continue the RI's responsibility for recalls affecting such vehicles. Therefore, we plan to amend the phrase in new § 592.6(j)(1) to read, ''with respect to any motor vehicle that it has imported or for which it has furnished a certificate of conformity.'' This will be broad enough to cover Type 1 motor vehicles that the RI imports for resale, as well as Type 2 motor vehicles that it sells and/or for which it furnishes conformity statements to NHTSA.

We understand that it is the practice of most major manufacturers who sell vehicles in the United States to include in their safety recall campaigns vehicles that were originally manufactured for sale in Canada that have been registered in the United States (with the exception of some Asian producers of Canadian vehicles). Nevertheless, the statute requires a RI to assure that the owner of each vehicle it imports or conforms has been provided with notification of all noncompliances and safety-related defects and the opportunity to receive a free remedy.

To allow us to ascertain whether a RI is satisfying those obligations, when a vehicle manufacturer determines that a noncompliance or safety-related defect exists in its vehicles and commences its notification and remedy campaign, we need each RI to inform us whether the manufacturer's campaign will also cover vehicles that the RI has imported. If it does not, the RI must notify the current owner and provide an appropriate remedy. We are proposing to require each RI to inform us not later than 30 days after a vehicle manufacturer commences its notification campaign whether the manufacturer's recall will cover vehicles imported by the RI. If not, the RI would be required to furnish us with a copy of the notification that it intends to send to the vehicle owners, in accordance with 49 CFR part 577, and to provide the appropriate remedy without charge.

To allow us to monitor the performance of manufacturers in carrying out their recall responsibilities, we issued 49 CFR 573.6, which requires manufacturers conducting recalls to provide six quarterly reports to us setting forth specified information regarding the recall. This information includes the number of vehicles or items of equipment covered by the campaign and the number of vehicles or equipment items remedied by the end of each calendar quarter. Although RIs are ''manufacturers,'' we have tentatively concluded that some of the provisions of § 573.6 can be relaxed with respect to them.

For recalls that have been announced by a vehicle manufacturer before the RI submits the information required by § 592.6(d) or (e), the RI must ensure the completion of appropriate recall repairs before it releases the vehicle; therefore, there appears to be no need for the RI to submit any reports pursuant to § 573.6 with respect to those recalls. This is reflected in proposed § 592.6(j)(5). Nor do we need to receive reports from RIs with respect to recall campaigns being conducted by the manufacturer on vehicles imported by the RI.

There may be instances when the U.S. manufacturer does not want to include the Canadian counterparts of the recalled vehicles in its campaign. Recall responsibility in this instance falls upon the RI, as it does when the RI makes its own determination of a defect or noncompliance. In these instances we need to receive reports from RIs. While 49 CFR 573.6 requires vehicle manufacturers to submit six quarterly reports containing extensive, detailed information, we believe that fewer reports and significantly less information is needed from RIs. Therefore, we are proposing to merely require two reports for each post-importation recall campaign. The first report would be due nine months after the RI began to notify owners, and the second report would cover the 18-month period after notification began. Those reports would be due not later than the 30th day following the end of each of the two periods. Also, in view of the differences between RIs and other vehicle manufacturers, we are proposing in § 592.6(j)(5) to reduce the amount of information required in such reports.

Finally, we have reviewed current § 592.6(g)(2)(i) relating to the 8-year period of remedy without charge, and have restated it in proposed § 592.6(j)(6) in a much simpler fashion. By doing so, we are heeding E.O. 12866 and its goal to write all rules in plain language. As noted in our discussion under § 592.6(b), the TREAD Act has increased the period of free remedy to 10 years. This increase, effective as of the date of enactment of the TREAD Act, is reflected in proposed § 592.6(j)(2).

9. Section 592.6(m): Duty To Notify NHTSA of Any Change of Information in the Registration Application Including Prior Notification Before Adding or Discontinuing the Use of Any Facility

At present, § 592.5(f) requires a RI to notify us not later than 30 days after a change in any of the information submitted in its registration application. We would maintain this requirement as a duty under new § 592.6(m), with one exception.

We have tentatively concluded that, where the change involves the use of a facility not designated in the registration application, we should be notified of the intent to use such facility not less than 30 days before such change takes place, and provided with the same information required in the original RI application, including non-electronic photographs of the facility. This will allow us to evaluate the adequacy of the new facility for the services to be performed there. We are also proposing to require the RI to notify us 10 days in advance before it discontinues the use of any identified facility, and to identify the facility, if any, that will be used in its stead.

10. Section 592.6(n): Duty To Assure That at Least One Full-Time Employee of a RI Is Present at Each of the RI's Facilities

Where a RI has several separate facilities, we are concerned about the RI's ability to supervise conformance and recall work to maintain records regarding the vehicles it has imported, and our ability to inspect the vehicles, operation, and records. To address these concerns, we have tentatively decided to adopt a new § 592.6(n) to require each RI to assure that at least one full-time employee of the RI is present at each of its facilities. This is consistent with our statement in the preamble to the final rule establishing part 592 that a RI may not utilize agents to fulfill its statutory responsibilities, and that ''conformance operations must be carried out by

Registered Importers (and) their employees.'' 54 FR 40083, at 40086.

11. Section 592.6(o): Prohibition of Two or More RIs Co-Utilizing the Same Employee or the Same Conformance, Repair, or Storage Facility

Questions have been raised whether two or more RIs may use common employees or a shared facility to perform conformance modifications or recall repairs, or to store imported vehicles. As indicated above, we do not allow a RI to make arrangements with other persons, including its customers (e.g., used car dealers) and other RIs, under which the other entity would perform the RI's duties. We have tentatively concluded that to allow two or more RIs to use the same employee, or a common facility for repairs, conformance work, or storage, raises the possibility of ineffective management and controls, particularly when the main office of a RI is some distance away from the facility in question. A storage facility shared with another RI will also make it more difficult to identify bonded vehicles for which an individual RI may be responsible when we are conducting inspections. We therefore propose to add a new § 592.6(o) to prohibit a RI from co-utilizing any employee, or any conformance, repair, or storage facility, with another RI.

If a RI stores bonded vehicles on premises that do not belong to it, the storage area should be clearly delineated and the vehicles being stored not mingled with vehicles for which the RI is not responsible (other than its vehicles that have been released from bond).

12. Section 592.6(p): Duty To Provide Timely Response To NHTSA Requests for Information

Under 49 U.S.C. 30166(e), we reasonably may require a manufacturer to make reports to enable us to decide whether it is complying with any of our requirements. Our requests for information invariably identify the date by which we expect a response. As noted above, a RI is a statutory manufacturer because it imports motor vehicles for resale. We have tentatively decided that a regulation reiterating the requirement to make timely reports under section 30166(e) will heighten our ability to obtain information, and to provide a basis for suspension or revocation of a registration if the information is not forthcoming.

13. Section 592.6(q): Duty To Pay Fees in a Timely Manner

We propose a new section adding a specific duty for a RI to pay all applicable fees in a timely manner. Although a registration may be suspended under § 592.7(a) upon a RI's failure to pay fees when they are due and payable, we wish to emphasize that it is an affirmative duty for a RI to pay fees and pay them in a timely manner.

14. Section 592.6(r): Duty of Entities That Are RIs When Final Rule is Adopted To Provide Information That Will Be Required of New RI Applicants

As described above, we are proposing to make comprehensive revisions in § 592.5 to the information required in RI applications. By their own terms, these new requirements would apply to applications pending as of the effective date of the final rule. However, we believe that, to assure proper qualifications and operations, entities that are RIs at the time the final rule becomes effective must furnish the equivalent information, even though that information was not required at the time they submitted their original applications. In order to ensure that this information is provided by those whose applications have been granted previously (*i.e.*, those who are already RIs at the time of the final rule), we are proposing that RIs, not later than 30 days after the effective date of the amendments to § 592.5(a), provide all the information that the revised regulation will require. A RI may incorporate by reference any item of information previously provided to the Administrator in its application, annual statement, or notification of change by a clear reference to the date, page and entry in the existing document. This additional information would include the RI's designation of an agent for service of process if it is not organized under the law of any state of the United States. Failure to provide this information in a timely manner would be grounds for suspension.

C. Automatic Suspension, Revocation, and Suspension of Registrations; Reinstatement of Registrations (Sec. 592.7)

1. Section 592.7(a): Automatic Suspension of a Registration

49 U.S.C. 30141(c)(4)(A) authorizes NHTSA to suspend a registration for not complying with specified statutory requirements as well as ''regulations prescribed under this subchapter'', *i.e.* 49 U.S.C. 30141–47. Two of the circumstances warranting suspension are of a serious enough nature that section 30141(c)(4)(B) requires the suspension to be automatic: when a Registered Importer does not, in a timely manner, pay a fee required by Part 594 of this title or for knowingly filing a false or misleading certification under 49 U.S.C. 30146. Our present regulation covers this in 49 CFR 592.7(a) and (b).

Currently, § 592.7(a) provides that a registration will automatically be suspended if we have not received a fee by the beginning of the 31st day after it is due and payable.

Until now, we have only applied this provision to the annual fee that the RI must pay pursuant to § 594.6. However, 49 U.S.C. 30141(a)(3) also authorizes the imposition of fees ''to pay for the costs of—(A) processing bonds provided * * * under subsection (d) of this section; and (B) making the decisions under this subchapter.''

Under this provision, we have established fees for the filing of a petition for a determination whether a vehicle is eligible for importation (§ 594.7); for importing a vehicle covered by an eligibility determination by NHTSA (§ 594.8); for reimbursement of bond processing costs (§ 594.9); and for review and processing of a conformity certificate (§ 594.10). We are also proposing to add a new § 594.11 to establish a fee applicable to the importation of Type 1 motor vehicles, infra.

Under current § 594.5(e), (f), and (g), the fees for importing a vehicle covered by a NHTSA eligibility determination, for bond processing costs, and for the NHTSA review and processing of a conformity certificate are to be submitted with the certificate of conformity. However, we have allowed RIs to delay payment until 30 days after we issue a monthly invoice indicating the amount due. In practice, about 80 percent of the payments are made less than two weeks after the invoice, and most payments are transmitted electronically or made by credit card. We are proposing to formalize the actual payment practice by establishing a due date of 15 days from the date of the invoice by deleting subsections (e), (f), and (g) and adding a new § 594.5(f).

Since there can be no legitimate reason for not paying required fees in a timely manner, we intend to suspend automatically a RI's registration if any of the required fees are not received by their due dates. As we propose in § 592.7(a)(1), if a RI has not paid its annual fee by October 10 or paid its other fees within 15 calendar days of NHTSA's invoice, on the next business day we would inform Customs that the RI's registration had been suspended

until further notice, and that the RI may not import any additional motor vehicles. We intend to apply this policy as of the effective date of the final rule to fees that are overdue as of that date under the old rule.

If a fee is paid after registration is suspended, following receipt and clearance of the payment we would reinstate the registration and inform Customs of this action. However, to further encourage timely payment and to partially cover our administrative costs of processing such a suspension and reinstatement, we are proposing to require the RI to also pay an amount equal to 10 percent of the overdue amount as a condition of having the registration reinstated.

Congress also directed us to establish procedures for automatically suspending a registration of a RI that has knowingly filed a false or misleading certification. 49 U.S.C. 30141(c)(4)(B). We have currently implemented this to some degree in § 592.7(b). The procedure that we currently follow is not truly ''automatic.'' We inform the RI in writing of the facts giving rise to our belief that it has knowingly filed a false or misleading certification, and afford it 30 days in which to present data, views, and arguments in its behalf. After considering the views of the RI, we make a final decision and notify the RI in writing. If we decide to suspend, we inform the RI of the period of suspension.

Upon review of these provisions, we propose to revise them to reflect the express intent of Congress that a knowing filing of a false or misleading certification shall result in automatic suspension of a registration. We believe there are certain situations under which we could justifiably conclude that a filing had been knowingly false or misleading, such as by filing(s) of false or misleading certifications after we have warned the RI of similar transgressions, by filing a document that was clearly falsified, by falsely representing a vehicle to be older than it really is and certifying it to performance requirements that applied in an earlier year rather than to the requirements that applied in the year of its manufacture, or by representing that recall work had been done when it had not been done. Under proposed § 592.7(a)(2), if we decide that a RI has knowingly filed a false or misleading certification, we would automatically suspend the RI's registration, notifying the RI by letter of the decision, the length of the suspension, if applicable, and the facts and conduct upon which our decision was based. We would afford the RI, within 30 days of the Administrator's notification, an opportunity to challenge the decision by presenting data, views and arguments in writing or in person. We could also suspend a registration non-automatically for these violations under section 30141(c)(4)(A). For example, in a complex case involving filing a false and misleading certification under section 30146, we might provide an opportunity for a hearing before issuing a suspension.

We have identified three further situations that we believe warrant automatic suspension. It is imperative that we be able to reach each RI to obtain information or to conduct an inspection. Each RI must include telephone numbers and a street address in the United States with its application. Under current § 592.5(f), a regulation prescribed under section 30141(c)(1), a RI is to notify us in writing within 30 days after its change of street address or phone number. As noted above, in proposed new § 592.6(m), a RI would be required to notify us at least 30 days in advance of its change of street address and/or telephone number.

There have been instances in which mail addressed to a RI has been returned as ''undeliverable.'' When this occurs, and the RI cannot readily be contacted by us, the agency has lost its ability to communicate with the RI even though the RI may still be importing motor vehicles. This is an untenable and unacceptable situation. Therefore, we are proposing in § 592.7(a)(3) to automatically suspend a registration, and request Customs not to allow vehicles to be imported into the U.S. by a RI, if our letters to the RI are returned to us as undeliverable at the street address it has provided to us or if the telephone number provided to us is disconnected.

As discussed above, we are proposing that each entity who is a RI at the time that the final rule is adopted provide us with information equivalent to that which will be required of new RI applicants not later than 30 days after the effective date of the final rule (§ 592.6(r)). If a RI fails to provide this information, we would automatically suspend its registration (§ 592.7(a)(4)).

Our final proposal for automatic suspension of a registration reflects our concern over the recent practice of some RIs of releasing vehicles based upon forged or otherwise falsified documents purporting to be agency bond release letters. Such falsification is a criminal action deserving of severe sanctions. We intend to refer such matters to the Department of Justice for its consideration of possible criminal prosecution. In addition, however, we believe that the registration of a RI that is releasing vehicles on the basis of such falsified bond release letters should be suspended automatically, and we are proposing to include appropriate language in § 592.7(a). Moreover, it is likely that during such a suspension we would commence a proceeding to revoke the registration, in accordance with the procedures discussed below that we would adopt as part of § 592.7(b).

We are interested in having comments as to whether other violations of section 30141(c)(4) might warrant automatic suspension, such as failure to admit a NHTSA inspector to the premises, or to make records available for inspection.

2. Section 592.7(b): Non-Automatic Suspension and Revocation of Registrations

49 U.S.C. 30141(c)(4)(A) requires us to establish procedures for revoking or suspending a registration for not complying with a requirement of 49 U.S.C. 30141–30147, or any of sections 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or regulations prescribed under any of those sections. We had intended to implement 49 U.S.C. 30141(c)(4)(A) by regulation but have not completely done so.

The statute authorizes us to consider revocation or suspension of a RI's registration for a broad range of violations, literally for any failure to comply with any aspect of the Imported Vehicle Safety Act of 1988 or its implementing regulations, 49 CFR parts 591–594, as well other general requirements of Chapter 301 relating to notification, recalls, inspections, and recordkeeping. We are therefore proposing in § 592.7(b) to reflect the statutory language of 49 U.S.C. 30141(c)(4)(A) and to clarify and broaden the circumstances under which a registration may be suspended or revoked. This would encompass any failure to perform any duty prescribed by § 592.6.

We have also reviewed the suspension and revocation procedures currently specified in § 592.7(b) and (c). Under these procedures, if the Administrator has reason to believe that a RI has failed to comply with a requirement and that a RI's registration should be suspended or revoked, (s)he notifies the RI in writing, affording an opportunity to present data, views, and arguments, either in writing or in person, as to why the registration should not be revoked or suspended. The Administrator then decides as to the appropriate action under the circumstances. If a registration is suspended or revoked, the RI may

request reconsideration of the decision ''if the request is supported by factual matter which was not available to the Administrator at the time the registration was suspended or revoked'' (current § 592.7(d)).

These procedures currently apply to all suspensions and revocations (other than the automatic suspension of § 592.7(a) for failure to pay a fee). As discussed above, they would be slightly modified to apply to automatic suspensions to address cases in which a RI knowingly files a false or misleading certification.

We are proposing a revised procedure for non-automatic suspension and revocation of registrations. Under our proposal, the Administrator would notify the RI if there was reason to believe that the RI had violated one or more statutes or regulations, and that suspension for a proposed period or revocation would be an appropriate sanction under the circumstances. The proceedings would then essentially follow those set out in §§ 592.7(a), (b), and (c) of the current regulation, affording the RI, within 30 days of the Administrator's notification, an opportunity to present data, views and arguments in writing or in person as to whether the violations occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. The Administrator would make a decision on the basis of all information then available, and notify the RI in writing of the decision. Because the Registered Importer would have already been afforded an opportunity to present data, views, and arguments relating to the proposed suspension, we do not plan to provide an opportunity to seek administrative reconsideration of a decision to suspend or revoke a registration under this subsection.

3. Section 592.7(c): Reinstatement of Suspended Registrations

Current § 592.7(f) specifies that the Administrator shall reinstate a suspended registration if the cause that led to the suspension no longer exists, as determined by the Administrator, either upon the Administrator's motion, or upon the submission of further information or fees by the RI. We believe that the provisions governing reinstatement of registrations need to be clarified and expanded to reflect the changes we are proposing in our suspension procedures.

Under our proposal, there are four specific bases upon which a registration could be automatically suspended (§ 592.7(a)), and a registration may be suspended for failure to comply with statutory or regulatory authorities after notification from the Administrator (§ 592.7(b)). Proposed § 592.7(c) would specify the conditions under which the registrations would be reinstated under each of the proposed bases for suspension.

4. Section 592.7(d): Effect of Suspension or Revocation.

If a registration is suspended or revoked, the entity will no longer be considered a RI, will no longer have the rights and authorities appertaining thereto, and must cease and will not be allowed to import vehicles. We would notify Customs of our action.

Under current § 592.7(e), if a registration is revoked, the RI is not refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked. This would be retained in new § 592.7(d). In addition, in accordance with 49 U.S.C. 30141(c)(2), the section would specify that a RI whose registration has been revoked may not apply for reregistration. The prohibition would apply if any of the principals of the applicant had been, or been affiliated with, a principal of the RI whose registration was revoked.

5. Section 592.7(e): Continuing Obligations of a RI Whose Registration Has Been Revoked or Suspended

Section 592.7(e)(1) would clarify that a RI whose registration is suspended or revoked remains obligated under § 592.6(j) to notify owners of, and to remedy, noncompliances or safety-related defects for each vehicle for which it has furnished a certificate of conformity or information to the Administrator.

Although a suspended or revoked RI will be foreclosed from importing vehicles, there may well be Type 2 motor vehicles in its custody that are still under bond, or Type 1 vehicles for which information has not been submitted to the Administrator pursuant to § 592.6(e). New § 592.7(e)(2) would cover these vehicles. With respect to those Type 2 motor vehicles that the RI has certified and for which it has submitted certificates of conformity to NHTSA at the time of a suspension or revocation, NHTSA will review and act upon the submissions as if the suspension or revocation had not occurred, and the RI may release the vehicles from custody when NHTSA releases the bonds, even if its suspension is in effect. With respect to those vehicles for which certification or information submissions have not been submitted at the time a registration has been suspended, and the suspension is for the first time, the RI would not be precluded from performing conformance work, and it would be allowed to certify vehicles and submit certificates of conformity or information to NHTSA when the registration is reinstated, but it would be required to retain custody of those vehicles during the suspension period. NHTSA will toll the 120-day submittal period during the term of the first suspension. When a registration has been revoked, or suspended for a second (or more) time, the RI would be required to export all vehicles for which it has not yet submitted certificates of conformity or information to NHTSA at the time of the suspension or revocation.

As for those vehicles imported for personal use under § 591.5(f)(2)(ii) that the RI has contracted to conform and for which it has not yet submitted certifications, the RI would be required to notify immediately the owners of the vehicles of NHTSA's action. We are proposing to adopt a conforming amendment to part 591 under which the notified owner would be required to contract with another RI in order to have the vehicle certified and released. The applicable 120-day period for submission of certification information would be tolled during the period from the date of the RI's notice to the importer until the date of the contract with the substitute RI. This would be designated as § 591.7(e). We would remove existing § 591.7(e), which has expired (§ 591.7(e) provided for applications to the Administrator, on or before February 14, 2000, to change the status of vehicles imported pursuant to § 591.5(j)).

D. Proposed Amendments of Part 591 to Preclude the Importation by a RI of a Salvage, Repaired Salvage, or Reconstructed Motor Vehicle; Minor Conforming Amendments to Part 591; § 592.9: Forfeiture of Bond

Within the past year, some RIs have sought to import heavily damaged motor vehicles both before and after their repair. In addition, some motor vehicles have been imported consisting of the body of one vehicle and the chassis and frame of another. Although we may have determined under part 593 that the original vehicles, as manufactured, are capable of being modified to meet Federal motor vehicle safety standards, when a vehicle has been heavily damaged or reconstructed, we have no assurance that it can be restored to a condition in which it complies, or can be brought into compliance with, the Federal motor vehicle safety standards. We have tentatively decided that the

safety of the American public would be served by prohibiting importation of salvage vehicles into this country. Accordingly, we propose amending part 591 to require a RI to declare that the motor vehicle it is importing (whether Type 1 or Type 2) is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle as defined below.

Under the proposal, a ''salvage motor vehicle'' would mean a vehicle that is less than 25 years old that has been damaged to the extent that to restore it to operable and licensable condition would require replacement of two or more specified major components such as engine and transmission, frame, front clip assembly and rear clip assembly. This definition is based in large part upon that of the State of Georgia. A ''repaired salvage motor vehicle'' would mean a salvage motor vehicle that has been restored to an operable and licensable condition. A ''reconstructed motor vehicle'' would mean a vehicle less than 25 years old whose body is mounted on a chassis or frame that is not its original chassis or frame. Pursuant to 49 U.S.C. 30112(b)(9), motor vehicles that are at least 25 years old may be imported without the need to meet the Federal motor vehicle safety standards.

Under our proposal, Part 592 would be extended to cover conformance with the theft prevention standard. We need, then, to modify the terms of the safety and bumper standard conformance bonds (appendix A and appendix B of part 591) to cover compliance with the theft prevention standard as well, and appropriate amendments are proposed. The two bonds presently differ somewhat in wording because they were adopted at different times, and we would also revise them in nonsubstantive ways to be more consistent with each other.

There is no need to modify the bond terms to reflect their applicability only to Type 2 motor vehicles, since the regulatory text in the first instance does not require the entry of a Type 1 motor vehicle to be accompanied by a bond.

Section 591.8(c) requires that ''the surety on a bond shall possess a certificate of authority to underwrite Federal bonds. (See list of certificated sureties at 54 FR 27800, June 30, 1989).'' When published late in 1989, this list was intended to be a reference to current sureties, rather than a list of sureties that is incorporated by reference. The list is a document that changes as sureties are added to and dropped from the list, and we wish to drop the reference to it. The requirement would remain, of course, that, at the time the bond is given, the surety possesses a certificate of authority to underwrite Federal bonds.

To ensure that the conditions under which the conformance bond may be forfeited are clearly understood, we are proposing to adopt a new § 592.9 that clearly describes the forfeiture conditions.

E. Section 594.11: Fees To Be Paid by Registered Importers for Importation of Type 1 Motor Vehicles

Under 49 CFR part 594, *Schedule of Fees Authorized by 49 U.S.C. 30141,* certain fees are due from RIs: A fee for importation of a vehicle covered by an eligibility decision made on NHTSA's initiative (§ 594.8); a fee to cover bond processing costs (§ 594.9), and a fee to cover review of and processing a conformity certificate (§ 594.10).

Type 1 motor vehicles remain vehicles covered by an eligibility decision made on NHTSA's initiative, and it appears appropriate that RIs continue to pay the fee established by § 594.8(c) for each Type 1 motor vehicle they import. Because no bond or certification conformity statement would accompany these vehicles, the fees established by §§ 594.9 and 594.10 would no longer be applicable. However, we will be receiving and processing certain identifying information on Type 1 motor vehicles, including information relating to safety recalls, and we believe that we will spend some amount of time on these activities that should be reimbursed pursuant to 49 U.S.C. 30141(c)(4). Based upon our experience in processing conformity packages submitted by RIs for Canadian vehicles, we estimate that the cost of processing the importation of a Type 1 motor vehicle would be approximately $13. Accordingly, we are proposing to add a new § 594.11 to require a fee of $13 for each Type 1 motor vehicle imported by a RI. If the information is submitted by Automated Broker Interface (ABI), the fee would be $6, provided that payment is by credit card and that all the information is correct.

These fees are identical to those that we adopted on September 19, 2000, as an amendment to § 594.10, *Fee for review and processing of conformity certificate,* and which apply to the importation of all nonconforming vehicles, including Canadian vehicles, effective October 1, 2000 (65 FR 56497). Because we cannot adopt § 594.11 until the amendments to part 592 are adopted, the fees specified in § 594.11 for the processing of information submitted for Type 1 vehicles will not be effective until October 1, 2001, assuming that a final rule based on this proposal is issued before that date. The question then arises as to the fee to be paid to the agency by a RI for the importation of Type 1 vehicles in the period between the effective date of the final rule and October 1, 2001. Because the information furnished the Administrator for Type 1 vehicles is, in effect, a certification of conformity of those vehicles, we will continue to collect the fees specified in § 594.10 in the interim period. We note, too, that these fees would be identical to those proposed for § 594.11.

IV. Effective Date

The final rule would be effective 30 days after its publication in the **Federal Register**.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, we have determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The intent of the rulemaking action is to modify regulatory procedures that have been in effect for almost ten years. In most cases, the effect of the proposed amendments would be to relax or eliminate burdens on regulated entities. This action does not involve a substantial public interest or controversy. The rulemaking action would not have a substantial impact on any transportation safety program or on state and local governments. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

We have also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action will not have a significant economic impact upon a substantial number of small entities.

The following is our statement providing the factual basis for our certification (5 U.S.C. 605(b)). The proposal primarily affects registered importers (RIs) of motor vehicles. As of September 20, 2000, there were 166 entities that are currently RIs under 49 CFR part 592. Their business is importing motor vehicles for resale. That this is a profitable business is

demonstrated by the growing number of vehicles imported from Canada and the increasing number of applicants to become a RI. About 75 percent of vehicles being imported are Type 1 motor vehicles as defined by the proposal. If the proposed rule is adopted, a RI would be relieved of the present necessity to provide conformance bonds for these vehicles and to provide conformance information to us, resulting in cost savings to the RI. Other aspects of the proposal are refinements and clarifications of existing RI obligations. RIs may or may not be small businesses as defined by the Small Business Administration's regulations, but we believe that the overall effect of the proposal will be to the economic benefit of any RI, regardless of its size. Governmental jurisdictions will not be affected.

C. Executive Order 13132 (Federalism)

E.O. 13132 (64 FR 43255, August 10, 1999), revokes and replaces E.O.s 12612 ''Federalism'' and 12875 ''Enhancing the Intergovernmental Partnership.'' E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' 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 E.O. 13132, NHTSA may not issue a regulation that has federalism implication, 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 NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The 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 E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because the proposal would not impose any manufacturing requirements. We expect the volume of vehicles imported from Canada to increase, independent of our rulemaking actions.

E. Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Paperwork Reduction Act

The procedures in this rule to permit importation of motor vehicles and equipment not originally manufactured for the U.S. market include information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The original information collection requirements of part 591 were approved by the OMB pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Under the proposal, new requirements would be imposed for submission of safety recall data on all vehicles, but this would be more than offset by the proposed reduction in paperwork required for Type 1 motor vehicles, which are 75 percent of the vehicles currently imported. We believe, therefore, that the existing clearance covers a final rule that would be based on implementing this proposal and we have not sought a new or expanded clearance. This collection of information has been assigned OMB Control No. 2127–0002 (''Motor Vehicle Information'').

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because a final rule based on this proposal would not have an effect of $100 million, no Unfunded Mandates assessment has been prepared.

H. Plain Language

E.O. 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language include consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies

from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the internet. To read the comments on the internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2000–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

List of Subjects in 49 CFR Parts 567, 591, 592, and 594

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 567, 591, 592, and 594 would be amended as follows:

PART 567—CERTIFICATION

1. The authority citation for part 567 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

2. Section 567.4 would be amended by revising paragraph (k) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(k) In the case of passenger cars and multipurpose passenger vehicles (as defined by § 541.4(b)(5) of this chapter) admitted to the United States under part 591 of this chapter to which the label with statement required by paragraphs (a) and (g)(5)(ii) respectively of this section has not been affixed by the original producer or assembler of the vehicle, if the vehicle is from a line listed in appendix A to part 541 of this chapter the registered importer shall affix a label meeting the requirements of paragraph (g)(5)(ii) this section.

* * * * *

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 would be revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

2. Section 591.4 would be amended by adding the following definitions in alphabetical order:

§ 591.4 Definitions.

* * * * *

Reconstructed motor vehicle means a motor vehicle whose body is less than 25 years old and which is mounted on a chassis or frame that is not its original chassis or frame and that is less than 25 years old.

Repaired salvage motor vehicle means a salvage motor vehicle that has been repaired to the extent that any State will issue it a title and register it for use on the public streets, roads or highways.

Salvage motor vehicle means a motor vehicle less than 25 years old that has been wrecked, damaged, or destroyed to the extent that to repair it to the extent that any State would issue it a title and register it for use on the public streets, roads or highways would require replacement of two or more of the following subassemblies: Front clip assembly (fenders, grille, hood and bumper), rear clip assembly (rear quarter panels and floor panel assembly), side assembly (fenders, door(s), and quarter panel), engine and transmission, top assembly (except for convertible tops), or frame.

3. Section 591.5 would be amended as follows:

a. By revising the introductory text of paragraph (f),

b. By adding the word ''and'' following the semicolon at the end of paragraph (f)(2)(ii),

c. By adding a new paragraph (f)(3), and

d. By adding a new paragraph (g). The revision and additions read as follows:

591.5 Declarations required for importation.

* * * * *

(f) The vehicle does not conform with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, but the importer is eligible to import it because:

* * * * *

(3) The vehicle is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle.

(g) The vehicle was certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and its original manufacturer has informed NHTSA that it complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards except the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and (if appropriate) S5.5.11 of § 571.108 of this chapter (related to daytime running lamps). The vehicle is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle.

* * * * *

4. Section 591.6 would be amended by revising paragraphs (c) and (d) to read as follows:

§ 591.6 Documents accompanying declarations.

* * * * *

(c) A declaration made pursuant to paragraph (f) of § 591.5 of this part, and under a bond for the entry of a single vehicle, shall be accompanied by a bond

in the form shown in Appendix A to this part in an amount equal to 150% of the dutiable value of the vehicle, or, if under bond for the entry of more than one vehicle, shall be accompanied by a bond in the form shown in Appendix B to this part and by Customs Form CF 7501, for the conformance of the vehicle(s) with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, or, if conformance is not achieved, for the delivery of such vehicles to the Secretary of the Treasury for export at no cost to the United Sates, or for its abandonment.

(d) A declaration made pursuant to paragraph (f) of § 591.5 of this part by an importer who is not a Registered Importer shall be accompanied by a copy of the contract or other agreement that the importer has with a Registered Importer to bring the vehicle into conformance with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.

* * * * *

5. Section 591.7 would be amended by revising paragraph (e) to read as follows:

§ 591.7 Restrictions on importations.

* * * * *

(e) If the importer of a vehicle under § 591.5(f)(2)(ii) has been notified in writing by the Registered Importer with which it has executed a contract or other agreement that the registration of the Registered Importer has been suspended (for other than the first time) or revoked, pursuant to § 592.7 of this chapter, and that it has not affixed a certification label on the vehicle and/or filed a certification of conformance with the Administrator as required by § 592.6 of this chapter, and that it therefore may not release the vehicle for the importer, the importer shall execute a contract or other agreement with another Registered Importer for the certification of the vehicle and submission of the certification of conformance to the Administrator. The Administrator shall toll the 120-day period for submission of certification information to the Administrator pursuant to § 592.6(d) of this chapter during the period from the date of the Registered Importer's notification to the importer until the date of the contract with the substitute Registered Importer.

6. Section 591.8 would be amended by revising the first sentence of paragraph (a) and by revising paragraphs (c), (d), introductory text, (d)(1), (d)(2), and (d)(6) to read as follows:

§ 591.8 Conformance bond and conditions.

(a) The bond required under paragraph (c) of § 591.6 of this part for importation of a vehicle not originally manufactured to conform with all applicable standards issued under part 541, part 571 and part 581 of this chapter shall cover only one motor vehicle and shall be in an amount equal to 150% of the dutiable value of the vehicle. * * *

* * * * *

(c) The surety on the bond shall possess a certificate of authority to underwrite Federal bonds.

(d) In consideration of the release from the custody of the U.S. Customs Service, or the withdrawal from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, or a motor vehicle not originally manufactured to conform to applicable standards issued under part 541, part 571, and part 581 of this chapter, the obligors (principal and surety) shall agree to the following conditions of the bond:

(1) To have such vehicle brought into conformity with all applicable standards issued under part 541, part 571, and part 581 of this chapter within the number of days after the date of entry that the Administrator has established for such vehicle (to wit, 120 days);

(2) In the case of a vehicle imported pursuant to paragraph (f) of § 591.5, to file (or if not a Registered Importer, to cause the Registered Importer of the vehicle to file) with the Administrator, a certificate that the vehicle complies with each Federal motor vehicle safety, bumper, and theft prevention standard in the year that the vehicle was manufactured that applies in such year to the vehicle; or

* * * * *

(6) If the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), or to abandon the vehicle to the United States, or to deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or to any other port of entry, and to secure all documents necessary for exportation of the vehicle from the United States at no cost to the United States, or in default of abandonment or redelivery after prior notice by the Administrator to the principal, to pay to the Administrator the amount of the bond.

* * * * *

7. Appendix A to part 591 would be amended by revising the introductory text and Conditions (1), (2), and (6) to read as follows:

Appendix A to Part 591—Section 591.5(f) Bond for the Entry of a Single Vehicle

Department of Transportation

National Highway Traffic Safety Administration

Bond to ensure conformance with federal motor vehicle safety, bumper, and theft prevention standards

(To redeliver vehicle, to produce documents, to perform conditions of release such as to bring vehicle into conformance with all applicable Federal motor vehicle safety, bumper, and theft prevention standards)

Know All Men by These Presents That

(principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation), as principal, and (surety's name, mailing address which includes city, state, ZIP code and state of incorporation), as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of (bond amount in words) dollars ($ (bond amount in numbers)), which represents 150% of the entered value of the following described motor vehicle, as determined by the U.S. Customs Service: (model year, make, series, and VIN) for the payment of which we bind ourselves, our heirs, executors, and assigns (jointly and severally), firmly bound by these presents.

WITNESS our hands and seals this _____ day of _____, 20_____.

Whereas, motor vehicles may be entered under the provisions of 49 U.S.C. Chapters 301, 325, and 331; and DOT Form HS–7 ''Declaration,''

Whereas, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform with the Federal motor vehicle safety, or bumper, or theft prevention standards; and

Whereas, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety, bumper, and theft prevention standards (or, if not a Registered Importer, has a contract with a Registered Importer covering the vehicle described above); and

Whereas, pursuant to 49 CFR part 593, a regulation promulgated under 49 U.S.C. Chapter 301, the Administrator of the National Highway Traffic Safety Administration has determined that the motor vehicle described above is eligible for importation into the United States; and

Whereas, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 20_____,

Now, therefore, the condition of this obligation is such that—

(1) The above-bounden principal (the ''principal''), in consideration of the permanent admission into the United States of the motor vehicle described above (the ''vehicle''), voluntarily undertakes and agrees to have such vehicle brought into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards within the time period specified by the Administrator of the National Highway Traffic Safety Administration (the ''Administrator'');

(2) The principal shall then file, or if not a Registered Importer, shall then cause the Registered Importer of the vehicle to file, with the Administrator a certificate that the vehicle complies with each Federal motor vehicle safety standard in effect in the year that the vehicle was manufactured and which applies in such year to the vehicle, and that the vehicle complies with applicable requirements of the Federal bumper and theft prevention standards;

* * * * *

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

* * * * *

8. Appendix B to part 591 would be amended by revising the introductory text and Conditions (1), (2), and (6) to read as follows:

Appendix B to Part 591—Section 591.5(f) Bond for the Entry of More Than a Single Vehicle

Department of Transportation

National Highway Traffic Safety Administration

Bond to ensure conformance with federal motor vehicle safety, bumper, and theft prevention standards

(To redeliver vehicles, to produce documents, to perform conditions of release such as to bring vehicles into conformance with all applicable Federal motor vehicle safety, bumper, and theft prevention standards)

Know All Men by These Presents That (principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation), as principal, and (surety's name, mailing address which includes city, state, ZIP code and state of incorporation) as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of (bond amount in words) dollars ($ (bond amount in numbers)), which represents 150% of the entered value of the following described motor vehicle, as determined by the U.S. Customs Service: (model year, make, series, and VIN of each vehicle) for the payment of which we bind ourselves, our heirs, executors, and assigns (jointly and severally), firmly bound by these presents.

WITNESS our hands and seals this __day of __, 20__.

Whereas, motor vehicles may be entered under the provisions of 49 U.S.C. Chapters 301, 325, and 331; and DOT Form HS–7 ''Declaration,''

Whereas, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal desires to import permanently the motor vehicles described above, which are motor vehicles that were not originally manufactured to conform with the Federal motor vehicle safety, or bumper, or theft prevention standards; and

Whereas, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety, bumper, and theft prevention standards; and

Whereas, pursuant to 49 CFR part 593, a regulation promulgated under 49 U.S.C. Chapter 301, the Administrator of the National Highway Traffic Safety Administration has determined that each motor vehicle described above is eligible for importation into the United States; and

Whereas, the motor vehicles described above have been imported at the port of _____, and entered at said port for consumption on entry No. _____, dated _____, 20_____;

Now, therefore, the Condition of this Obligation is such that—

(1) The above-bounden principal (the ''principal''), in consideration of the permanent admission into the United States of the motor vehicles described above (the ''vehicles''), voluntarily undertakes and agrees to have such vehicles brought into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards within the time period specified by the Administrator of the National Highway Traffic Safety Administration (the ''Administrator'');

(2) For each motor vehicle described above, the principal shall then file with the Administrator a certificate that such vehicle complies with each Federal motor vehicle safety standard in effect in the year that such vehicle was manufactured and which applies in such year to such vehicle, and that such vehicle complies with applicable requirements of the Federal bumper and theft prevention standards;

* * * * *

(6) And if the principal has received written notice from the Administrator that such vehicle has been found not to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and written demand that such vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon such vehicle to the United States, or shall deliver such vehicle, or cause such vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of such vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator an amount equal to 150% of the entered value of such vehicle as determined by the U.S. Customs Service;

* * * * *

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 592 would be revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

2. Section 592.4 would be amended by adding the following definitions in alphabetical order:

§ 592.4 Definitions.

* * * * *

Independent insurance company means an entity that is registered with any State and authorized to conduct an insurance business, none of whose affiliates, shareholders, officers, directors, or employees, or in affinity with such, is employed by, or has a financial interest in, or otherwise controls or participates in the business of, a Registered Importer to which it issues or underwrites a service insurance policy.

* * * * *

Principal means any officer, partner, or director of a Registered Importer, and any person whose ownership interest in a Registered Importer is 10% or more.

* * * * *

Safety recall means a notification and remedy campaign conducted pursuant to 49 U.S.C. 30118–30120 to address a noncompliance with a Federal motor vehicle safety standard or a defect that relates to motor vehicle safety.

Service insurance policy means any policy issued or underwritten by an independent insurance company which covers a specific Type 1 or Type 2 motor vehicle and guarantees that any noncompliance with a Federal motor vehicle safety standard or defect related to motor vehicle safety determined to exist in that vehicle will be remedied without charge to the owner of the vehicle.

Type 1 motor vehicle means a motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and whose original manufacturer has informed NHTSA in writing that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft standards (except the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and (if appropriate) S5.5.11 of § 571.108 of this chapter (related to daytime running lamps)).

Type 2 motor vehicle means a motor vehicle, other than a Type 1 motor vehicle, that is not certified by its original manufacturer as complying with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.

3. Section 592.5 would be amended by revising paragraphs (a)(3), (4), (5), (9) and (11), (b), (e) and (f) and by adding a new paragraph (h) to read as follows:

§ 592.5 Requirements for registration and its maintenance.

(a) * * *

(3) Sets forth the full name, street address, and title of the person preparing the application, and the full name, street address, e-mail address (if any), and telephone and facsimile (if any) numbers in the United States of the person for whom application is made (the ''applicant'').

(4) Specifies the form of the applicant's organization and the State under which it is organized, and:

(i) If the applicant is an individual, the application must include the full name, street address, date of birth, and Social Security Number of the individual;

(ii) If the applicant is a partnership, the application must include the full name, street address, date of birth, and Social Security Number of each partner; if one or more of the partners is a limited partnership, the application must include the names and street addresses of the general partners and limited partnership; if one or more of the partners is a corporation, the application must include the information specified by either paragraph (a)(4)(iii) or (iv) of this section, as applicable;

(iii) If the applicant is a non-public corporation, the application must include the full name, street address, date of bith, and Social Security Number of each officer, director, manager, and person who is authorized to sign documents on behalf of the corporation. The application must also include the name of any person who owns or controls 10 percent or more of the corporation. The applicant must also provide a statement issued by the Office of the Secretary of State, or other official of the State in which the applicant is incorporated, certifying that the applicant is a corporation in good standing;

(iv) If the applicant is a public corporation, the applicant must include a copy of its latest 10–K filing with the Securities and Exchange Commission, and provide the name and address of any person who is authorized to sign documents on behalf of the corporation;

(v) Contains a statement that the applicant has never had a registration revoked pursuant to § 592.7, nor is it, or was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a Registered Importer which has had a registration revoked pursuant to § 592.7; and

(vi) Identifies any shareholder, officer, director, employee, or any person in affinity with such, who has been previously affiliated with another Registered Importer in any capacity. If the response is affirmative, the applicant shall state the name of each such Registered Importer and the affiliation of any identified person.

(5) Includes the following:

(i) The street address of each of its facilities for conformance, storage, and repair in the United States that the applicant will use to fulfill its duties as a Registered Importer and where the applicant will maintain the records it is required by this part to keep;

(ii) The street address that the applicant designates as its mailing address (in addition, an applicant may list a post office box, provided that it is in the same city as the street address designated as its mailing address);

(iii) A copy of the applicant's business license or other similar document issued by a State of the United States or a political subdivison thereof, authorizing it to do business as an importer, or modifier, or seller of motor vehicles, or a statement by the applicant that it has made a bona fide inquiry and is not required by such state or local law to have such a license or document;

(iv) The name of each principal of the applicant whom the applicant authorizes to submit conformity certifications to NHTSA and the street address of the repair, storage, or conformance facility where each such principal will be located; and

(v) If an applicant is not organized under the laws of a State of the United States, the application must be accompanied by the applicant's designation of an agent for service of process in the form specified by § 551.45 of this chapter.

* * * * *

(9) Sets forth in full complete descriptive information, views, and arguments sufficient to establish that the applicant:

(i) Is technically able to modify any nonconforming motor vehicle to conform to all applicable Federal motor vehicle safety, bumper, and theft prevention standards, including but not limited to the professional qualifications of the applicant and its employees at the time of the application (such as whether any such have been certified as mechanics), and a description of their experience in conforming and repairing vehicles;

(ii) Owns or leases facilities sufficient in nature and size to repair, conform, and store the number of vehicles for which it provides certification of conformance to NHTSA and which it imports and may hold pending release of conformance bonds, including a copy of a deed or lease evidencing ownership or tenancy for each such facility, still or video photographs of each such facility, the street address of each such facility, and for each such facility, a license or similar document issued by an appropriate state or local authority stating that the applicant is licensed to do business as an importer and/or modifier and/or seller of motor vehicles at that facility (or a statement by the applicant that it has made a bona fide inquiry and is not required by state or local law to have such a license or permission);

(iii) Is financially and technically able to notify and remedy a noncompliance with a Federal motor vehicle safety standard or defect related to motor vehicle safety determined to exist in the

vehicles that it imports and/or for which it provides certification of conformity to NHTSA through repair, repurchase or replacement of such vehicles; and

(iv) Is able to acquire and maintain information regarding the vehicles that it imported and the names and addresses of owners of the vehicles that it imported and/or for which it provided certifications of conformity to NHTSA in order to notify such owners when a noncompliance or defect related to motor vehicle safety has been determined to exist in such vehicles.

* * * * *

(11) Contains the statement: ''I certify that I have read and understood the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of applicant] will fully comply with each such duty. I further certify that all the information provided in this application is true and correct. I further certify that I understand that, in the event the registration for which it is applying is suspended or revoked, or lapses, (name of applicant) will remain obligated to notify owners and to remedy noncompliances or safety related defects, as required by 49 CFR 592.6(j), for each vehicle for which it has furnished a certificate of conformity or information to the Administrator.''

(b) If the application is incomplete, the Administrator notifies the applicant in writing of the information that is needed for the application to be complete and advises that no further action will be taken on the application until the applicant has furnished all the information needed.

* * * * *

(d) When the application is complete (and, if applicable, when the applicant has paid a sum representing the inspection component of the initial annual fee), the Administrator reviews the application and decides whether the applicant has complied with the requirements prescribed by paragraph (a) of this section. The Administrator shall base this decision on the application and upon any inspection NHTSA may have conducted of the applicant's conformance, storage, and recordkeeping facilities and any assessment of the applicant's personnel. If the Administrator decides that the applicant complies with the requirements, (s)he informs the applicant in writing and issues it a Registered Importer Number.

(e)(1) The Administrator shall deny registration to any applicant who (s)he decides does not comply with the requirements of paragraph (a) of this section and to an applicant whose previous registration has been revoked. The Administrator also may deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, or in affinity with, a Registered Importer whose registration has been revoked. In determining whether to deny an application, the Administrator may consider whether the applicant is comprised in whole or in part of relatives, employees, major shareholders, partners, or relations of former partners, of a Registered Importer whose registration was revoked.

(2) If the Administrator denies an application, (s)he informs the applicant in writing of the reasons for denial and that the applicant is entitled to a refund of that component of the initial annual fee representing the remaining costs of administration of the registration program, but not those components of the initial annual fee representing the costs of processing the application, and, if applicable, the costs of conducting an inspection of the applicant's facilities.

(3) Within 30 days of the date of the denial, the applicant may submit a petition for reconsideration. The applicant may submit information and/or documentation supporting its request. If the Administrator grants the request, (s)he notifies the applicant in writing and issues it a Registered Importer Number. If the Administrator denies the request, (s)he notifies the applicant in writing and refunds that component of the initial annual fee representing the remaining costs of administration of the registration program, but does not refund those components of the initial annual fee representing the costs of processing the application, and, if applicable, the costs of conducting an inspection.

(f) In order to maintain its registration, a Registered Importer must file an annual statement. The Registered Importer must affirm in its annual statement that all information provided in its application or pursuant to § 592.6(r) of this part, or as may have been changed in any notification that it has provided to the Administrator in compliance with § 592.6(m) of this part, remains correct, and that it continues to comply with the requirements to be a Registered Importer. The Registered Importer must include with its annual statement a current copy of its service insurance policy. Such statement must be titled ''Yearly Statement of Registered Importer,'' and must be filed not later than September 30 of each year. A Registered Importer must also pay any annual fee, and any other fee, that is established under part 594 of this chapter. An annual fee must be paid not later than September 30 of any calendar year for the fiscal year that begins on October 1 of that calendar year. The Registered Importer must pay any other fee not later than 15 days after the date of the written notice from the Administrator.

* * * * *

(h) An applicant whose application is pending on [the effective date of the final rule] and which has not provided the information required by paragraph (a) of this section, as amended, will be notified by the Administrator that it must provide all the information required by this amended subsection before the Administrator gives further consideration to the application.

4. Section 592.6 would be revised to read as follows:

§ 592.6 Duties of a registered importer.

Each Registered Importer must:

(a) With respect to each motor vehicle that it imports into the United States, assure that the Administrator has decided that it is eligible for importation pursuant to part 593 of this chapter, prior to such importation. The Registered Importer must also bring such vehicle into conformity with all applicable Federal motor vehicle safety standards prescribed under part 571 of this chapter, the bumper standard prescribed under part 581 of this chapter, if applicable, and the theft prevention standard prescribed under part 541 of this chapter, if applicable, and furnish certification to the Administrator pursuant to § 592.6(e) of this part, within 120 calendar days after such entry, if a Type 2 motor vehicle. For each Type 2 motor vehicle, the Registered Importer must furnish to the Secretary of Treasury at the time of importation a bond in an amount equal to 150 percent of the dutiable value of the eligible vehicle, as determined by the Secretary of the Treasury, to ensure that such vehicle either will be brought into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards or will be exported (at no cost to the United States) by the importer or the Secretary of the Treasury or abandoned to the Unites States. However, if the Registered Importer has procured a continuous entry bond, it must furnish the Administrator with such bond, and must furnish the Secretary of the Treasury (acting on behalf of the Administrator) with a photocopy of such bond and Customs Form CF 7501 at the time of importation of each Type 2 motor vehicle.

(b) Establish, maintain, and retain, for 10 years from the date of entry, at the facility in the United States it has identified in its application pursuant to

§ 592.5(a)(5)(ii) of this part, for each Type 1 motor vehicle that it imports, and each Type 2 motor vehicle for which it furnishes a certificate of conformity, the following records, correspondence and other documents, in hard copies:

(1) The declaration required by § 591.5 of this chapter.

(2) All vehicle or equipment purchase or sales orders or agreements, conformance agreements between the Registered Importer and persons who import motor vehicles for personal use, and correspondence between the Registered Importer and the owner or purchaser of the vehicle.

(3) The make, model, model year, odometer reading, and VIN of each vehicle that it imports and the last known name and address of the owner or purchaser of the vehicle.

(4) Records, both photographic and documentary, sufficient to identify the vehicle and to substantiate that it has been brought into conformity with all safety, bumper, and theft prevention standards that apply to the vehicle, that the certification label has been affixed, and that either the vehicle is not subject to any safety recalls or that all noncompliances and safety defects covered by such recalls were remedied before the submission to the Administrator under paragraph (d) or (e) of this section. All required photographs shall be in true and unaltered form.

(5) A copy of the certification submitted to the Administrator pursuant to paragraph (d) of this section, and information submitted pursuant to paragraph (e) of this section.

(6) The number that the issuer has assigned to the service insurance policy that will accompany the vehicle and the name of the issuer of the policy, and substantiation that the Registered Importer has notified the issuer of the policy that a policy of the issuer has been provided with the vehicle.

(c) Take possession of the vehicle and perform all modifications necessary to conform the vehicle to all Federal motor vehicle safety, bumper, and theft prevention standards that apply to the vehicle at a facility that it has identified to the Administrator pursuant to § 592.5(a)(5)(i) of this part, and permanently affix to the vehicle at that facility, upon completion of conformance modifications and remedy of all noncompliances and defects related to any pending safety recalls, a label that identifies the Registered Importer and states that the Registered Importer certifies that the vehicle complies with all Federal motor vehicle safety, bumper, and theft prevention standards that apply to the vehicle, and contains all additional information required by § 567.4 of this chapter.

(d) For each Type 2 motor vehicle, certify to the Administrator:

(1) within 120 days of the importation that it has brought the motor vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards in effect at the time the vehicle was manufactured. The Registered Importer shall also certify, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter);

(ii) The vehicle complied as manufactured with those parts marking requirements; or

(iii) The Registered Importer has brought the vehicle into compliance with those requirements.

(2) If the Registered Importer certifies that the vehicle was originally manufactured to comply with a standard that does not apply to the vehicle or that it has modified the vehicle to conform to such standard, or if the certification is incomplete, the Administrator may refuse to accept the certification. The Administrator shall refuse to accept a certification for a vehicle that has not been determined to be eligible for importation under part 593 of this chapter. If the Administrator does not accept a submission, (s)he shall return it to the Registered Importer. The costs associated with such a return will be charged to the Registered Importer. If the Administrator returns the submission as described above, the 120-day period specified in paragraph (d)(1) of this section continues to run. If the Registered Importer certifies that it has modified the vehicle to bring it into compliance with a standard and has, in fact, performed no such modifications, the Administrator will regard such certification as ''knowingly false'' within the meaning of 49 U.S.C. 30115 and 49 U.S.C. 30141(c)(4)(B).

(3) The certification must be signed and submitted by a principal of the Registered Importer designated in its registration application pursuant to § 592.5(a)(5)(iv) of this part, with an original signature and not with a stamp or other device, and must include the statement that the signer has personal knowledge that the RI has performed all work required to bring such vehicle into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.

(4) The submission to the Administrator must specify the location of the facility where the vehicle was conformed, and the location where the Administrator may inspect the motor vehicle.

(5) The submission to the Administrator must contain substantiation that the vehicle is not subject to any safety recall campaigns as of the time of such submission, or, alternatively, that all noncompliances and defects covered by those safety recall campaigns have been remedied.

(6) When a Registered Importer certifies a make, model, and model year of a Type 2 motor vehicle for the first time, its submission must include:

(i) The make, model, model year and date of manufacture, odometer reading, VIN that complies with § 565.4(b), (c), and (g) of this chapter, and Customs Entry Number,

(ii) A statement that it has brought the vehicle into conformity with all Federal motor vehicle safety, bumper, and theft prevention standards that apply to the vehicle, and a description, with respect to each standard for which modifications were needed, of the modifications performed,

(iii) A copy of the bond given at the time of entry to ensure conformance with the safety standards,

(iv) The vehicle's vehicle eligibility number,

(v) A copy of the HS–7 form executed at the time of its importation if a Customs broker did not make an electronic entry with Customs,

(vi) True and unaltered front, side, and rear photographs of the vehicle,

(vii) True and unaltered photographs of the original manufacturer's certification label and the certification label of the Registered Importer affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the Registered Importer certification label before it has been affixed),

(viii) Photographs and documentation sufficient to demonstrate conformity, and

(ix) The policy number of the service insurance policy furnished with the vehicle pursuant to paragraph (g) of this section.

(7) Except as specified below in this paragraph, a Registered Importer's second and subsequent certification submissions for a given make, model, and model year vehicle must contain the same information as its first submission, including the VIN of the vehicle covered that complies with § 565.4(b), (c), and (g) of this chapter, and must refer to its first submission. If the Registered Importer conformed such a vehicle in the same manner as it stated in its initial submission, it may say so in a subsequent submission and it need only provide photographs and documentation of the modifications that

it made to such a vehicle to achieve conformity.

(e) For each Type 1 motor vehicle:

(1) Submit to the Administrator the make, model, model year, odometer reading, VIN that complies with § 565.4(b), (c), and (g) of this chapter, date of manufacture, and Customs entry number of the vehicle, the policy number of the service insurance policy furnished with the vehicle pursuant to paragraph (g) of this section, and substantiation that the vehicle is not subject to any safety recall campaigns as of the time of the submission, or, alternatively, that all noncompliances and defects covered by those safety recall campaigns have been remedied.

(2) The submission must contain a statement that the vehicle complies with, or that the Registered Importer has brought it into compliance with, all safety and bumper standards that apply to the vehicle. The Registered Importer shall also state, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter);

(ii) The vehicle as manufactured complied with those parts marking requirements; or

(iii) The Registered Importer brought the vehicle into compliance with those requirements.

(3) The submission must be signed and submitted by a principal of the Registered Importer designated in its registration application pursuant to § 592.5(a)(5)(D) of this part, with an original signature and not with a stamp or other device, and must include the statement that the signer has personal knowledge that the RI has certified that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards.

(4) The information required by this subparagraph must be submitted on a monthly basis so that the Administrator receives it within 10 days of the end of the month in which the vehicle was imported.

(f) With respect to each Type 2 motor vehicle, not take any of the following actions until the bond referred to in paragraph (a) of this section has been released, unless 30 days have elapsed from the date the Administrator receives the Registered Importer's certification of compliance of the motor vehicle in accordance with paragraph (d) of this section (the 30-day period may be extended if the Administrator has made written demand to inspect the motor vehicle):

(1) Operate the motor vehicle on the public streets, roads, and highways;

(2) Sell the motor vehicle or offer it for sale;

(3) Store the motor vehicle on the premises of a dealer;

(4) License or register the motor vehicle for use on public streets, roads, or highways; or

(5) Release custody of the motor vehicle to a person for sale, or license or registration for use on public streets, roads, and highways.

(g) Furnish with each motor vehicle for which it furnishes certification or information to the Administrator in accordance with paragraphs (d) or (e) of this section, not later than the time it sells the vehicle, or releases custody of a vehicle to an owner who has imported it for personal use, a service insurance policy written or underwritten by an independent insurance company, in the amount of $2,000. The Registered Importer shall provide the insurance company with a monthly list of the VINs of vehicles covered by the policies of the insurance company, and shall retain a copy of each such list in its files.

(h) Comply with the requirements of part 580 of this chapter, *Odometer Disclosure Requirements,* when the Registered Importer is a transferor of a vehicle as defined by Sec. 580.3 of that part.

(i) With respect to any Type 2 motor vehicle it has imported and for which it has furnished a performance bond, deliver such vehicle to the Secretary of the Treasury for export, or abandon it to the United States, upon demand by the Administrator, if such vehicle has not been brought into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards in a timely manner.

(j)(1) With respect to any motor vehicle that it has imported or for which it has furnished a certificate of conformity or information to the Administrator as provided in paragraphs (d) or (e) of this section, provide notification and a remedy without charge to the vehicle owner according to part 577 of this chapter, after any determination that a vehicle to which such motor vehicle is substantially similar under part 593 of this chapter contains a defect related to motor vehicle safety or fails to conform with an applicable Federal motor vehicle safety standard. However, this obligation does not exist if the manufacturer of the vehicle or the Registered Importer of such vehicle demonstrates to the Administrator that the defect or noncompliance is not present in such vehicle, or that the defect or noncompliance was remedied before the submission of the certificate or the information to the Administrator, or that the original manufacturer of the vehicle will provide such notification and remedy.

(2) With respect to defects and noncompliances that are determined to exist in vehicles described in the first sentence of paragraph (j)(1) of this section, inform the Administrator in writing whether the original manufacturer or the Registered Importer will provide the required notification and remedy. If the Registered Importer informs the Administrator that the manufacturer will notify and remedy, the Registered Importer must submit documentation sufficient to support its statement. If the Registered Importer informs the Administrator that it will notify and remedy, it must provide the Administrator with a copy of the notification that it intends to send. A Registered Importer must inform the Administrator according to this subsection not later than 30 days after the original manufacturer commences its notification campaign.

(3) Any notification to vehicle owners sent by a Registered Importer must contain the information specified in § 577.5 of this chapter, and must include the statement that if the Registered Importer's repair facility is more than 50 miles from the owner's mailing address, remedial repairs may be performed at no charge at a specific facility designated by the Registered Importer that is within 50 miles of the owner's mailing address, or, if no such facility is designated, that repairs may be performed anywhere, with the cost of parts and labor to be reimbursed by the Registered Importer.

(4) Such notification by a Registered Importer must also conform to the requirements of §§ 577.7 and 577.8 of this chapter, and is subject to §§ 577.9 and 577.10 of this chapter.

(5) Except as provided in this paragraph, instead of the six quarterly reports required by § 573.6(a) of this chapter, the Registered Importer must submit to the Administrator two reports containing the information specified in § 573.6(b)(1)–(4) of this chapter. The reports shall cover the periods ending nine and 18 months after the commencement of the owner notification campaign, and must be submitted within 30 days of the end of each period. However, the reporting requirements established by this paragraph shall not apply to any safety recall that a vehicle manufacturer conducts that includes vehicles for which the Registered Importer has submitted the information required by paragraphs (d) or (e) of this section.

(6) The requirement that the remedy be provided without charge does not apply if the motor vehicle was bought by its first purchaser from the Registered Importer (or, if imported for personal use, conformed pursuant to a contract with the Registered Importer) more than 10 calendar years before the date the Registered Importer or the original manufacturer notifies the Administrator of the noncompliance or safety-related defect pursuant to part 573 of this chapter.

(k) In order that the Administrator may determine whether the Registered Importer is meeting its statutory responsibilities, allow representatives of NHTSA during operating hours, upon demand, and upon presentation of credentials, to copy documents, or to inspect, monitor, or photograph any of the following:

(1) Any facility where any vehicle for which a Registered Importer has the responsibility of providing a certificate of conformity to applicable safety standards is being modified, repaired, tested, or stored, and any facility where any record or other document relating to the modification, repair, testing, or storage of these vehicles is kept;

(2) Any part or aspect of activities relating to the modification, repair, testing, or storage of vehicles by the Registered Importer;

(3) Any motor vehicle for which the Registered Importer has provided a certification of conformity to the Administrator before the Administrator releases the conformance bond.

(l) Provide an annual statement and pay an annual fee as required by § 592.5(e) of this part.

(m) Except as noted in this paragraph, notify the Administrator in writing of any change that occurs in the information which was submitted in its registration application, not later than the 30th calendar day after such change. If a Registered Importer intends to use a facility that was not identified in its registration application, not later than 30 days before it begins to use such facility, it must notify the Administrator of its intent to use such facility with a description of its intended use, provide a copy of the lease or ownership agreement relating to that facility and a copy of the license or similar document issued by an appropriate state or municipal authority stating that the Registered Importer is licensed to do business at that facility as an importer and/or modifier and/or seller of motor vehicles (or a statement that it has made a bona fide inquiry and is not required by state or local law to have such a license or permission), and supply non-electronic photographs of that facility. If a Registered Importer intends to change its street address or telephone number or discontinue use of a facility that was identified in its registration application, it shall notify the Administrator not less than 10 days before such change or discontinuance of such use, and identify the facility, if any, that will be used instead.

(n) Assure that at least one full-time employee of the Registered Importer is present at each of the facilities it maintains for the repair, conformance, or storage of motor vehicles in connection with its duties as a Registered Importer.

(o) Not co-utilize the same employee, or any repair, conformance, or storage facility with any other Registered Importer.

(p) Make timely, complete, and accurate responses to any requests by the Administrator for information, whether by general or special order or otherwise, to enable the Administrator to decide whether the Registered Importer has complied or is complying with 49 U.S.C. Chapters 301, 325, and 331, and the regulations issued thereunder.

(q) Pay all fees either by certified check, cashier's check, money order, credit card, or Electronic Funds Transfer System made payable to the Treasurer of the United States, in accordance with the invoice of fees incurred by the Registered Importer in the previous month that is provided by the Administrator. All such fees are due and payable not later than 15 days from the date of the invoice.

(r) Not later than [30 days after the effective date of the final rule amending § 592.5(a)], file with the Administrator all information required by § 592.5(a) of this part, as amended. If a Registered Importer has previously provided any item of information to the Administrator in its registration application, annual statement, or notification of change, it may incorporate that item by reference in the filing required under this subsection, provided that it clearly indicates the date, page, and entry of the previously-provided document.

5. Section 592.7 would be revised to read as follows:

§ 592.7 Automatic suspension, suspension, revocation, and reinstatement of suspended registrations.

This section specifies the acts and omissions that may result in suspensions and revocations of Registered Importers by NHTSA, the process for such suspensions and revocations, and the provisions applicable to the reinstatement of suspended registrations.

(a) *Automatic suspension of a registration.* 49 U.S.C. 30141(c)(4)(B) explicitly authorizes NHTSA to automatically suspend a registration when a Registered Importer does not, in a timely manner, pay a fee required by part 594 of this chapter or for knowingly filing a false or misleading certification under 49 U.S.C. 30146. NHTSA also may automatically suspend a registration under other circumstances, as specified in paragraphs (a)(3), (4) and (5) of this section.

(1) If the Administrator has not received the annual fee from a Registered Importer by the close of business on October 10 of a year, or, if October 10 is a weekend or holiday, by the next business day thereafter, or has not received any other fee owed by a Registered Importer within 15 calendar days from the date of the Administrator's invoice, the Registered Importer's registration will be automatically suspended at the beginning of the first following business day. The Administrator will promptly notify the Registered Importer in writing of the suspension. Such suspension shall remain in effect until reinstated pursuant to paragraph (c)(1) of this section.

(2) If the Administrator decides that a Registered Importer has knowingly filed a false or misleading certification, (s)he shall promptly notify the Registered Importer in writing that its registration is automatically suspended. The notification shall inform the Registered Importer of the facts and conduct upon which the decision is based, and the period of suspension (which begins as of the date of the Administrator's written notification). The notification shall afford the Registered Importer an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days. Not later than 30 days after the submission of data, views, and arguments, the Administrator, after considering all the information available, shall notify the Registered Importer in writing of his or her decision on reconsideration. Any suspension issued under this paragraph shall remain in effect until reinstated pursuant to paragraph (c)(2) of this section.

(3) If mail is undeliverable to the Registered Importer at the official street address it has provided to the Administrator, or if the telephone has been disconnected at the telephone number specified by the Registered Importer, the Administrator may automatically suspend the Registered Importer's registration. Such suspension shall remain in effect until the

registration is reinstated pursuant to paragraph (c)(3) of this section.

(4) If a Registered Importer, not later than [30 days after the effective date of the final rule amending § 592.5(a)], does not file with the Administrator all information required by § 592.5(a) of this part, as required by § 592.6(r) of this part, the Administrator may automatically suspend the registration. The Administrator shall promptly notify the Registered Importer in writing of the suspension. Such a suspension shall remain in effect until the registration is reinstated pursuant to paragraph (c)(4) of this section.

(5) If a Registered Importer releases one or more Type 2 motor vehicles on the basis of a forged or falsified bond release letter, and the Administrator has not in fact issued such a letter, the Administrator may automatically suspend the registration. The Administrator shall promptly notify the Registered Importer in writing of the suspension. The notification shall afford the Registered Importer an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days. Not later than 30 days after the submission of data, views, and arguments, the Administrator, after considering all the information available, shall notify the Registered Importer in writing of his or her decision on reconsideration. Any suspension issued under this paragraph shall remain in effect until reinstated pursuant to paragraph (c)(2) of this section.

(6) The Administrator, in his or her sole discretion, may provide notice of a proposed suspension or revocation based on the matters in paragraphs (a)(1) through (a)(5) of this section, and provide an opportunity to be heard prior to a decision, as provided in paragraph (b)(2) of this section.

(b) *Non-automatic suspension or revocation of a registration.* (1) 49 U.S.C. 30141(c)(4)(A) authorizes NHTSA to revoke or suspend a registration if a Registered Importer does not comply with a requirement of 49 U.S.C. 30141–30147, or any of 49 U.S.C. 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or any regulations issued under these sections. These regulations include, but are not limited to, parts 567, 568, 573, 577, 591, 593, and 594 of this chapter.

(2) When the Administrator has reason to believe that a Registered Importer has violated one or more of the statutes or regulations cited in paragraph (b)(1) of this section and that suspension or revocation would be an appropriate sanction under the circumstances, (s)he shall notify the Registered Importer in writing of the facts giving rise to the allegation of a violation and the proposed length of a suspension, if applicable, or revocation. The notice shall afford the Registered Importer an opportunity to present data, views, and arguments, in writing and/or in person, within 30 days of the date of the notice, as to whether the violation occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. If the Administrator decides, on the basis of the available information, that the Registered Importer has violated a statute or regulation, the Administrator may suspend or revoke the registration. The Administrator shall notify the Registered Importer in writing of the decision, including the reasons for it. A suspension or revocation is effective as of the date of the Administrator's written notification. The Administrator shall state the period of any suspension in the notice to the Registered Importer. There shall be no opportunity to seek reconsideration of a decision issued under this paragraph.

(c) *Reinstatement of suspended registrations.* (1) When a registration has been suspended under paragraph (a)(1) of this section, the Administrator will reinstate the registration when all fees owing are paid by wire transfer or certified check from a bank in the United States, together with a sum representing 10 percent of the amount of the fees that were not timely paid.

(2) When a registration has been suspended under paragraph (a)(2) or (a)(5) of this section, the registration will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(3) When a registration has been suspended under paragraph (a)(3) of this section, the registration will be reinstated when the Administrator decides that the Registered Importer has provided a street address to which mail to it is deliverable and a telephone number in its name that is in service.

(4) When a registration has been suspended under paragraph (a)(4) of this section, the registration will be reinstated when the Administrator decides that the Registered Importer has provided all relevant documentation and information required by § 592.6(r) of this part.

(5) When a registration has been suspended under paragraph (b) of this section, the registration will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(d) *Effect of suspension or revocation.* If a Registered Importer's registration is suspended or revoked, as of the date of suspension or revocation the entity will no longer be considered a Registered Importer, will no longer have the rights and authorities appertaining thereto, and must cease importing, and will not be allowed to import, vehicles for resale. The Registered Importer will not be refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked. The Administrator shall notify the U.S. Customs Service of the suspension or revocation of the registration.

(e) *Continuing obligations.* (1) A Registered Importer whose registration is suspended or revoked remains obligated under § 592.6(j) of this part to notify owners and to remedy noncompliances or safety related defects for each vehicle for which it has furnished a certificate of conformity or information to the Administrator.

(2) With respect to any vehicle for which it has not affixed a certification label and submitted a certificate of conformity or information to the Administrator under § 592.6(d) or (e) of this part at the time its registration has been suspended, and the suspension is for the first time, the Registered Importer may not affix a certification label or submit a certificate of conformity until its registration is reinstated, and the Administrator will toll the 120-day period during the term of that suspension.

(3) When a registration has been revoked, or suspended for other than the first time, the Registered Importer must export within 30 days of the effective date of the suspension or revocation all vehicles that it imported to which it has not affixed a certification label and furnished a certificate of conformity or information to the Administrator pursuant to § 592.6(d) or (e) of this part. With respect to any vehicle imported pursuant to § 591.5(f)(2)(ii) of this part that the Registered Importer has agreed to bring into compliance with all applicable standards and for which it has not certified and furnished a certificate of conformity or information to the Administrator, the Registered Importer must immediately notify the owner of the vehicle in writing that its registration has been suspended or revoked.

6. Section 592.8 would be amended by revising paragraph (a), the first sentence of paragraphs (b), (c), and (d), and paragraph (e) to read as follows:

§ 592.8 Inspection; release of vehicle and conformance bond.

(a) With respect to any Type 2 motor vehicle for which it must provide a certificate of conformity to the Administrator as required by § 592.6(d) of this part, a Registered Importer shall not obtain title, licensing, or registration of the motor vehicle for use on the public roads, or release custody of it for such titling, licensing or registration, except in accordance with the provisions of this section.

(b) When conformance modifications to a Type 2 motor vehicle have been completed, a Registered Importer shall submit the certification and information required by § 592.6(d) of this part to the Administrator. * * *

(c) Before the end of the 30th calendar day after receipt of certification of a Type 2 motor vehicle, the Administrator may inform the Registered Importer in writing that an inspection of the vehicle is required to ascertain the veracity of the certification. * * *

(d) The Administrator may by written notice request certification verification by the Registered Importer before the end of the 30th calendar day after the date the Administrator receives certification of a Type 2 motor vehicle. * * *

(e) If the Registered Importer has received no written notice from the Administrator by the end of the 30th calendar day after it has furnished a certification of a vehicle to the Administrator, the Registered Importer may release the vehicle from custody, sell or offer it for sale, or have it titled, licensed or registered for use on the public roads.

* * * * *

7. New Section 592.9 would be added to read:

§ 592.9 Forfeiture of bond.

(a) A Registered Importer is required by § 591.6 of this chapter to furnish a bond with respect to each Type 2 motor vehicle that it imports. The conditions of the bond are set forth in § 591.8 of this chapter. Failure to fulfill any one of these conditions may result in forfeiture of the bond. A bond may be forfeited if the Registered Importer:

(1) Fails to bring the motor vehicle covered by the bond into compliance with all applicable standards issued under part 571, part 581, and part 541 of this chapter within 120 days;

(2) Fails to file with the Administrator a certificate that the motor vehicle complies with each Federal motor vehicle safety, bumper, and theft prevention standard in effect at the time the vehicle was manufactured and which applies to the vehicle;

(3) Fails to cause a motor vehicle to be available for inspection if it has received written notice from the Administrator that an inspection is required;

(4) Releases the motor vehicle before the Administrator accepts the certification and any modification thereof, if it has received written notice from the Administrator that there is reason to believe that the certification is false or contains a misrepresentation;

(5) Before the bond is released, releases custody of the motor vehicle to any person for license or registration for use on public roads, streets, and highways, or licenses or registers the vehicle, including titling the vehicle in the name of another person, unless 30 calendar days have elapsed after the Registered Importer has filed the certificate specified in paragraph (a)(2) of this section and the Registered Importer has not received written notice pursuant to paragraph (a)(3) or (a)(4) of this section. For purposes of this part, a vehicle is deemed to be released from custody if it is not located at a duly identified facility of the Registered Importer and the Registered Importer has not notified the Administrator of the vehicle's location or, if written notice has been provided, if the Administrator is unable to inspect the vehicle, or if the Registered Importer has transferred title to any other person regardless of the vehicle's location; or

(6) Fails to deliver the vehicle, or cause it to be delivered, to the custody of a District Director of Customs at any port of entry, for export or abandonment to the United States, and to execute all documents necessary to accomplish such purposes, if the Administrator has furnished it written notice that the vehicle has been found not to comply with all applicable Federal motor vehicle safety standards along with a demand that the vehicle be delivered for export or abandoned to the United States.

8. An Appendix A to part 592 would be added to read as follows:

APPENDIX A TO PART 592—TYPE 1 MOTOR VEHICLES AS OF [DATE FINAL RULE IS PUBLISHED] IMPORTED UNDER VSA 80 OR VSA 81

Year	Make	Model	Exceptions
1995	Audi	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All.	
2000		All.	
1995–2000	Chrysler	Cirrus.	
1995–2000		Concorde.	
1995–2000		Intrepid.	
2000		Neon.	
1996–2000		Sebring Convertible.	
1995–2000		Sebring Coupe.	
1995–2000		Town & Country.	
1995–1999	Dodge	Avenger.	
1995–1999		Neon.	
1994–1995		Stealth.	
1995–1999		Stratus.	
1995–2000		Viper.	
1995–2000		Caravan.	
1995–2000		Grand Caravan.	
1995–2000		Dakota.	
1998–2000		Durango.	
1995–2000		Ram Pickup.	
1995–2000		Ram Van/Wagon.	

APPENDIX A TO PART 592—TYPE 1 MOTOR VEHICLES AS OF [DATE FINAL RULE IS PUBLISHED] IMPORTED UNDER VSA 80 OR VSA 81—Continued

Year	Make	Model	Exceptions
1994–1997	Eagle	Vision.	
1995	Ford	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All.	
2000		All.	
1995	General Motors	All.	
1996	(Buick, Cadillac,	All.	
1997	Chevrolet, Geo,	All.	
1998	Oldsmobile, Pontiac,	All.	
1999	Saturn)	All.	
2000		All.	
1995	Infiniti	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All.	
2000		All.	
1995–2000	Jeep	Cherokee.	
1995–2000		Grand Cherokee.	
1995–1996		YJ.	
1997–2000		TJ.	
1995	Nissan	All Except	Sentra
1996		All Except	Sentra
1997		All Except	Sentra
1998		All Except	Sentra
1999		All Except	Sentra
2000		All.	
1995–1999	Plymouth	Breeze.	
1995–1999		Neon.	
1997		Prowler.	
1999–2000		Prowler.	
1995–2000		Voyager.	
1995–2000		Grand Voyager.	
1995	Volkswagen	All.	
1996		All.	
1997		All.	
1998		All.	
1999		All Except	Gold
2000		All.	

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

1. The authority citation for part 594 would continue to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 30141; 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.5 would be amended as follows:

a. By removing present paragraphs (e), (f), and (g) and adding new paragraph (f);

b. By redesignating paragraphs (h) and (i) as paragraphs (e) and (g) and revising newly redesignated paragraph (g). The addition and revision read as follows:

§ 594.5 Establishment and payment of fees.

* * * * *

(f) The Administrator will furnish each Registered Importer with a monthly invoice of the fees owed by the Registered Importer for reimbursement for bond processing costs and for the review and processing of conformity certificates and information regarding importation of Type 1 motor vehicles, as defined in § 592.4 of this chapter. A person who for personal use imports a vehicle covered by a determination of the Administrator must pay the fee specified in either § 594.8(b) or (c) of this chapter, as appropriate, to the Registered Importer, and the invoice will also include these fees. The Registered Importer must pay the fees within 15 days of the date of the invoice.

(g) Fee payments must be by certified check, cashier's check, money order, credit card, or Electronic Funds Transfer System, made payable to the Treasurer of the United States.

* * * * *

3. Section 594.9 would be amended by revising paragraph (a) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

(a) Each Registered Importer must pay a fee based upon the direct and indirect costs of processing each bond furnished to the Secretary of the Treasury on behalf of the Administrator with respect to each vehicle for which it furnishes a certificate of conformity pursuant to § 592.6(d) of this chapter.

* * * * *

4. Section 594.11 would be added to read as follows:

§ 594.11 Fee for review and processing of information relating to importation of Type 1 motor vehicles.

(a) Each Registered Importer must pay a fee based on the agency's direct and indirect costs for the review and processing of information relating to the

importation of a Type 1 motor vehicle pursuant to § 592.6(e) of this chapter.

(b) The direct costs attributable to the review and processing of information relating to the importation of a Type 1 motor vehicle include the estimated cost of contract and professional staff time, computer usage, and record assembly, marking, shipment and storage costs.

(c) The indirect costs attributable to the review and processing of information relating to the importation of a Type 1 motor vehicle include a pro rata allocation of the average benefits of persons employed in reviewing and processing the information, and a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items.

(d) The fee for review and processing of information relating to the importation of each Type 1 motor vehicle submitted on and after October 1, 2001, is $13. However, if the vehicle covered by the information has been entered electronically with the U.S. Customs Service through the Automated Broker Interface and the Registered Importer submitting the information has an e-mail address, the fee for the information is $6, provided that the fee is paid by a credit card issued to the Registered Importer and that all the information is correct.

Issued on: November 28, 2000.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 00–29034 Filed 11–17–00; 8:45 am]

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Federal Register

Monday,
November 20, 2000

Part III

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas; Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 98–2]

RIN 3014–AA21

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Amendment to advisory note.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is amending an advisory note to the accessibility guidelines for play areas. The amended advisory note clarifies that play components that are attached to a composite play structure and can be approached from a platform or deck (*e.g.,* climbers and overhead play components), are elevated play components. These play components are not considered ground level play components also, and do not count toward meeting the number of ground level play components that must be located on an accessible route.

DATES: The amendment is effective December 20, 2000.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 134 (Voice); (202) 272–5449 (TTY). E-mail address: *greenwell@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this document may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 2 on the telephone keypad, then 1, and requesting publication S–42 (Play Areas Final Rule, Amended Appendix Note). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–42. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). This document is also available on the Board's Internet site (*http://www.access-board.gov/play/finalrule-aan.htm*).

Background

On October 18, 2000, the Access Board issued final accessibility guidelines for play areas. 65 FR 62498 (October 18, 2000). The guidelines serve as the basis for enforceable standards to be adopted by the Department of Justice for new construction and alterations of play areas covered by the Americans with Disabilities Act. The guidelines distinguish between ground level and elevated play components, and provide that a minimum number of ground level and elevated play components must be located on an accessible route.

The appendix to the guidelines contains advisory notes to assist in understanding the guidelines. Advisory note A15.6.3 addresses elevated play components that are attached to a composite play structure. As originally issued, the advisory note used the example of a climber attached to a composite play structure. The advisory note stated that the climber may be considered either a ground level or elevated play component. The advisory note explained that if an accessible route is provided to the base of the climber and to the top of the climber, and the climber is counted toward meeting the number of elevated play components on an accessible route, the same climber cannot be counted toward meeting the number of ground level play components on an accessible route. The purpose of the advisory note was to clarify that such play components cannot be ''double-counted'' as both ground level and elevated play components. However, if climbers and other overhead play components that are attached to a composite play structure are counted as ground level play components, instead of elevated play components, it would result in significantly less access in play areas. Fewer ground level and elevated play components would have to be located on an accessible route; ramp access would be more limited; and there would be less diversity in the types of ground level play components provided. The advisory note was not intended to create a ''loophole'' for evading the guidelines. The economic assessment, which analyzed the impact of the guidelines, counted climbers and overhead play components attached to a composite play structure as elevated play components. Play equipment manufacturers and operators, who have followed the guidelines on a voluntary basis prior to their adoption as enforceable standards by the Department of Justice, have counted climbers and overhead play components attached to a composite play structure as elevated play components. Accordingly, the amended advisory note states that play components that are attached to a composite play structure and can be approached from a platform or deck (e.g., climbers or overhead play components), are considered elevated play components. The amended advisory note further states that these play components are not considered ground level play components also, and do not count toward meeting the number of ground level play components that must be located on an accessible route.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Thurman M. Davis, Sr.,

Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth above, part 1191 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY

Guidelines for Buildings and Facilities

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

1191 Appendix A [Amended]

2. In Part 1191, the appendix to Appendix A is amended by revising pages A22, A23 and A24 to read as follows:

Appendix A to Part 1191—Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

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BILLING CODE 8150–01–P

APPENDIX

A15.6.1 General. This section is to be applied during the design, construction, and alteration of play areas for children ages 2 and over. Play areas are the portion of a site where play components are provided. This section does not apply to other portions of a site where elements such as sports fields, picnic areas, or other gathering areas are provided. Those areas are addressed by other sections of ADAAG. Play areas may be located on exterior sites or within a building. Where separate play areas are provided within a site for children in specified age groups (e.g., preschool (ages 2 to 5) and school age (ages 5 to 12)), each play area must comply with this section. Where play areas are provided for the same age group on a site but are geographically separated (e.g., one is located next to a picnic area and another is located next to a softball field), they are considered separate play areas and each play area must comply with this section.

A15.6.2 Ground Level Play Components. A ground level play component is a play component approached and exited at the ground level. Examples of ground level play components include spring rockers, swings, diggers, and stand alone slides. When distinguishing between the different types of ground level play components, consider the general experience provided by the play component. Examples of different types of experiences include, but are not limited to, rocking, swinging, climbing, spinning, and sliding. A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide is not considered a different type of play component than a straight slide.

The number of ground level play components is not dependent on the number of children who can play on the play component. A large seesaw designed to accommodate ten children at once is considered one ground level play component.

Where a large play area includes two or more composite play structures designed for the same age group, the total number of elevated play components on all the composite play structures must be added to determine the additional number and types of ground level play components that must be provided on an accessible route, and the type of accessible route (e.g., ramps or transfer systems) that must be provided to the elevated play components.

Ground level play components accessed by children with disabilities must be integrated in the play area. Designers should consider the optimal layout of ground level play components accessed by children with disabilities to foster interaction and socialization among all children. Grouping all ground level play components accessed by children with disabilities in one location is not considered integrated.

A15.6.3 Elevated Play Components. Elevated play components are approached above or below grade and are part of a composite play structure. A double or triple slide that is part of a composite play structure is one elevated play component. For purposes of this section, ramps, transfer systems, steps, decks, and roofs are not considered elevated play components. These elements are generally used to link other elements on a composite play structure. Although socialization and pretend play can occur on these elements, they are not primarily intended for play.

Some play components that are attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck. For example, a climber attached to a composite play structure can be approached or exited at the ground level or above grade from a platform or deck on a composite play structure. Play components that are attached to a composite play structure and can be approached from a platform or deck (e.g., climbers and overhead play components), are considered elevated play components. These play components are not considered ground level play components also, and do not count toward the requirements in 15.6.2 regarding the number of ground level play components that must be located on an accessible route.

A15.6.4 Accessible Routes. Accessible routes within the boundary of the play area must comply with 15.6.4. Accessible routes connecting the play area to parking, drinking fountains, and other elements on a site must comply with 4.3. Accessible routes provide children who use wheelchairs or other mobility devices the opportunity to access play components. Accessible routes should coincide with the general circulation path used within the play area. Careful placement and consideration of the layout of accessible routes will enhance the ability of children with disabilities to socialize and interact with other children.

Where possible, designers and operators are encouraged to provide wider ground level accessible routes within the play area or consider designing the entire ground surface to be accessible. Providing more accessible spaces will enhance the integration of all children within the play area and provide access to more play components. A maximum slope of 1:16 is required for ground level ramps; however, a lesser slope will enhance access for those children who have difficulty negotiating the 1:16 maximum slope. Handrails are not required on ramps located within ground level use zones.

Where a stand alone slide is provided, an accessible route must connect the base of the stairs at the entry point, and the exit point of the slide. A ramp or transfer system to the top of the slide is not required. Where a sand box is provided, an accessible route must connect to the border of the sand box. Accessibility to the sand box would be enhanced by providing a transfer system into the sand or by providing a raised sand table with knee clearance complying with 15.6.6.3.

Elevated accessible routes must connect the entry and exit points of 50 percent of elevated play components. Ramps are preferred over transfer systems since not all children who use wheelchairs or other mobility devices may be able to use or may choose not to use transfer systems. Where ramps connect elevated play components, the maximum rise of any ramp run is limited to12 inches. Where possible, designers and operators are encouraged to provide ramps with a lesser slope than the 1:12 maximum. Berms or sculpted dirt may be used to provide elevation and may be part of an accessible route to composite play structures.

Platform lifts complying with 4.11 and applicable State and local codes are permitted as a part of an accessible route. Because lifts must be independently operable, operators should carefully consider the appropriateness of their use in unsupervised settings.

A15.6.5 Transfer Systems. Transfer systems are a means of accessing composite play structures. Transfer systems generally include a transfer platform and a series of transfer steps. Children who use wheelchairs or other mobility devices transfer from their wheelchair or mobility devices onto the transfer platform and lift themselves up or down the transfer steps and scoot along the decks or platforms to access elevated play components. Some children may be unable or may choose not to use transfer systems. Where transfer systems are provided, consideration should be given to the distance between the transfer system and the elevated play components. Moving between a transfer platform and a series of transfer steps requires extensive exertion for some children. Designers should minimize the distance between the points where a child transfers from a wheelchair or mobility device and where the elevated play components are located. Where elevated play components are used to connect to another elevated play component in lieu of an accessible route, careful consideration should be used in the selection of the play components used for this purpose. Transfer supports are required on transfer platforms and transfer steps to assist children when transferring. Some examples of supports include a rope loop, a loop type handle, a slot in the edge of a flat horizontal or vertical member, poles or bars, or D rings on the corner posts.

A15.6.6 Play Components. Clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap within play areas.

APPENDIX

A specific location has not been designated for the clear floor or ground spaces or maneuvering spaces, except swings, because each play component may require that the spaces be placed in a unique location. Where play components include a seat or entry point, designs that provide for an unobstructed transfer from a wheelchair or other mobility device are recommended. This will enhance the ability of children with disabilities to independently use the play component.

When designing play components with manipulative or interactive features, consider appropriate reach ranges for children seated in wheelchairs. The following table provides guidance on reach ranges for children seated in wheelchairs. These dimensions apply to either forward or side reaches. The reach ranges are appropriate for use with those play components that children seated in wheelchairs may access and reach. Where transfer systems provide access to elevated play components, the reach ranges are not appropriate.

Where a climber is located on a ground level accessible route, some of the climbing rings should be within the reach ranges. A careful balance of providing access to play components but not eliminating the challenge and nature of the activity is encouraged.

A15.6.7 Ground Surfaces. Ground surfaces along clear floor or ground spaces, maneuvering spaces, and accessible routes must comply with the ASTM F 1951 Standard Specification for Determination of Accessibility to Surface Systems Under and Around Playground Equipment. The ASTM F 1951 standard is available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, telephone (610) 832-9585. The ASTM F 1951 standard may be ordered online from ASTM (http://www.astm.org). The ASTM 1951 standard determines the accessibility of a surface by measuring the work required to propel a wheelchair across the surface. The standard includes tests of effort for both straight ahead and turning movement, using a force wheel on a rehabilitation wheelchair as the measuring device. To meet the standard, the force required must be less than that required to propel the wheelchair up a ramp with a 1:14 slope. When evaluating ground surfaces, operators should request information about compliance with the ASTM F 1951 standard.

Ground surfaces must be inspected and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951 standard. The type of surface material selected and play area use levels will determine the frequency of inspection and maintenance activities.

Children's Reach Ranges

Forward or Side Reach	Ages 3 and 4	Ages 5 through 8	Ages 9 through 12
High (maximum)	36 in (915 mm)	40 in (1015 mm)	44 in (1120 mm)
Low (minimum)	20 in (510 mm)	18 in (455 mm)	16 in (405 mm)

A24

[FR Doc. 00–29599 Filed 11–17–00; 8:45 am]
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Federal Register

Monday,
November 20, 2000

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones; Final Rule

Commercial Routes for the Grand Canyon National Park; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–1999–5926]

RIN 2120–AG74

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Delay of effective date.

SUMMARY: On April 4, 2000, the FAA published two final rules for Grand Canyon National Park (GCNP). One rule limited the number of commercial air tour operations in the GCNP Special Flight Rules Area (SFRA); the other modified the airspace of the SFRA. The Commercial Air Tour Limitations final rule was effective on May 4, 2000. The airspace modifications were scheduled to become effective December 1, 2000. On July 31, 2000, the United States Air Tour Association and seven air tour operators in GCNP requested a stay of the compliance date for the rules from the FAA. On October 11, 2000, the FAA published a denial of the stay request. On October 25, 2000, the Air Tour Providers filed with the D.C. Circuit Court of Appeals a Motion for Stay and Emergency Relief Pending Review of an Agency Order. On November 2, 2000, the FAA filed with the D.C. Circuit Court of Appeals its Opposition to Petitioners' Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules. This document delays the effective date of the Airspace Modification Final Rule so that the FAA may investigate further some new safety issues raised by the Air Tour Providers.

DATES: The final rule Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, was issued on March 28, 2000, and published in the **Federal Register** on April 4, 2000 (65 FR 17735). It was scheduled to become effective on December 1, 2000. The FAA is delaying the effective date of the final rule until December 28, 2000. This action does not affect the Commercial Air Tour Limitations final rule that became effective May 4, 2000.

ADDRESSES: You may view a copy of the final rules, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area and Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, through the Internet at: *http://dms.dot.gov*, by selecting docket numbers FAA–99–5926 and FAA–99–5927. You may also review the public dockets on these regulations in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation, 7th Ave., SW, Room 401, Washington, DC, 20590.

As an alternative, you may search the Federal Register's Internet site at http://www.access.gpo.gov/su__docs for access to the final rules.

You may also request a paper copy of the final rules from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267–9680.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service (AFS–200), Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; Telephone: (202) 493–4981.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2000, the Federal Aviation Administration published two final rules, Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17763; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17689, April 4, 2000. The Commercial Air Tour Limitations final rule became effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Routes Notice were scheduled to become effective December 1, 2000. The effective date of the Air Space Modification final rule and the new routes was delayed to provide the air tour operators ample opportunity to train on the new route system during the non-tour season. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

On May 8, 2000, The United States Air Tour Association and seven air tour operators (hereinafter collectively referred to as the Air Tour Providers) file a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. The FAA, The Department of Transportation, the Department of Interior, the National Park Service and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of Appeals. The Federal respondents in this case filed a motion for summary denial on grounds that petitioners had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the federal respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion. On October 11, 2000, (65 FR 60352) the FAA published a disposition of the stay request, denying the stay. On October 25, 2000, the Air Tour Providers filed a Motion for Stay and Emergency Relief Pending Review of an Agency Order with the Court of Appeals. The federal respondents filed their Opposition to Petitioner's Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules on November 2, 2000.

Agency Action

The Air Tour Providers have raised some specific safety allegations about the routes in the Dragon Corridor (Green Route 2 and 2R), Zuni Point Corridor (Green 1; Black 1) and east of the Desert View Flight Free Zone (Black 2 and Green 3). These safety issues were not previously raised to the FAA and thus the FAA has not had the opportunity to investigate the merit of these allegations. The FAA takes these allegations very seriously and thus has sent out a group of FAA safety inspectors to verify the significance of these allegations. Based on the information obtained from these investigators, the FAA will determine how to best resolve any safety issues of

merit. The FAA will report its findings to the Court by November 28, 2000. Because of the interrelationship between the new routes and the airspace changes adopted in the final rule, the FAA is delaying the effective date of the Airspace Modification until December 28, 2000. If the FAA determines that any of the safety issues raised by Petitioners have merit, then it will take the necessary steps to resolve them before making any of the routes effective and thus necessitating the implementation of the airspace modification final rule.

Immediate Effective Date

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become final rule upon issuance. The FAA and NPS must implement new air tour routes, flight-free zones, and flight corridors at the same time in order to transition to a new operating environment in GCNP. The FAA has determined that because new safety concerns have been raised that need to be investigated further, it is paramount that their rule become effective immediately.

Economic Evaluation

In issuing the final rule for the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zone, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket Number 99–5926, Amendment No. 93–80. This delay of the effective date for the final rule will not affect that evaluation, although the delay in the implementation of the EFZs may be temporarily cost relieving for air tour operators.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This extended delay of the effective date will not affect that supplemental analysis.

Federalism Implications

This amendment 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. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. The FAA has determined that this rule will not impose any unfunded mandates.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR part 93 as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

§§ 93.305 and 93.307 [Amended]

2. Sections 93.305 and 93.307 published on December 31, 1996 (61 FR 69330), corrected at 62 FR 2445 (January 16, 1997), and delayed at 65 FR 5397 (February 3, 2000) and made effective December 1, 2000 in a rule published on April 4, 2000 (65 FR 17736) because effective December 28, 2000.

§§ 93.301, 93.305, 93.307, 93.309 [Amended]

3. The amendments to Section 93.301, 93.305, 93.307 and 93.309 published on April 4, 2000 (65 FR 17736) now become effective on December 28, 2000.

Dated: Issued in Washington D.C. on November 14, 2000.

Jane F. Garvey,

Administrator, Federal Aviation Administration.

[FR Doc. 00–29622 Filed 11–16–00; 10:18 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; Delay of effective date.

SUMMARY: On April 4, 2000, the FAA issued a Notice of Availability of commercial routes in the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA) setting forth new routes available for GCNP. Additionally, on that same day, the FAA published a final rule modifying the airspace of the SFRA. The new routes and the Airspace final rule are interrelated. On July 31, 2000, the United States Air Tour Association and seven air tour operators in GCNP requested a stay of the compliance date for the airspace final rule from the FAA. On October 11, 2000, the FAA published a denial of the stay request. On October 25, 2000, the Air Tour Providers filed with the D.C. Circuit Court of Appeals a Motion for Stay and Emergency Relief Pending Review of an Agency Order. On November 2, 2000, the FAA filed with the D.C. Circuit Court of Appeals its Opposition to Petitioners' Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules. This document delays the effective date of the Route system until December 28, 2000 so that the FAA may investigate some new safety issues just raised by the Air Tour Providers.

DATES: The Notice of availability for Commercial Routes for the Grand Canyon National Park was issued on March 28, 2000, and published in the **Federal Register** on April 4, 2000 (65 FR 17698). It was scheduled to become effective on December 1, 2000. The FAA is delaying implementation of the routes until December 28, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service, (AFS–200). Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; Telephone (202) 493–4981.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2000, the Federal Aviation Administration published two final rules, the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The commercial Air Tour Limitations final rule became effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Routes Notice were scheduled to become effective December 1, 2000. The effective date of the Air Space Modification final rule and the new routes was delayed to provide the air tour operators ample opportunity to train on the new route system during the non-tour season. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

On May 8, 2000, the United States Air Tour Association and seven air tour operators (hereinafter collectively referred to as the Air Tour Providers) filed a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. This petition did not cover the Routes Notice. The FAA, The Department of Transportation, the Department of Interior, the National Park Service and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of appeals. The federal respondents in this case filed a motion for summary denial on grounds that petitions had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the federal respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion. On October 11, 2000, (65 FR 60352) the FAA published a disposition of the stay request, denying the stay. On October 25, 2000, the Air Tour Providers filed a Motion for Stay and Emergency Relief Pending Review of an Agency Order with the Court of Appeals. The federal respondents filed their Opposition to Petitioner's Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules on November 2, 2000.

Agency Action

The Air Tour Providers have raised some specific safety allegations about the routes in the Dragon Corridor (Green Route 2 and 2R), Zuni Point Corridor (Green 1; Black 1) and east of the Desert View Flight Free Zone (Black 2 and Green 3). These safety issues were not previously raised to the FAA and thus the FAA has not had the opportunity to investigate the merit of these allegations. The FAA takes these allegations very seriously and thus has sent out a group of FAA safety inspectors to verify the significance of these allegations. Based on the information obtained from these investigators, the FAA will determine how to best resolve any safety issues of merit. The FAA will report its findings to the Court by November 28, 2000. In the meantime, the FAA is delaying the effective date of the new routes until December 28, 2000. Elsewhere in this **Federal Register**, the FAA also is delaying the effective date of the airspace changes adopted in the April 4, 2000 final rule. The FAA also has suspended training on the routes in the Dragon Corridor, Zuni Point Corridor and east of Desert View Flight Free Zone until it has completed its safety review. If the FAA determines that any of the safety issues raised by Petitioners have merit, then it will take the necessary steps to resolve them before making any of the routes effective. The FAA also will provide adequate time for the needed training.

Dated: Issued in Washington, D.C. on November 14, 2000.

Jane F. Garvey,

Administrator, Federal Aviation Administration.

[FR Doc. 00–29621 Filed 11–16–00; 10:18 am]

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Toxic substances:
Polychlorinated biphenyls (PCBs)—
PCB waste return from U.S. territories outside U.S. Customs Territory; comments due by 12-1-00; published 11-1-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
Oncor Communications, Inc.; forbearance petition; comments due by 11-30-00; published 11-9-00
Digital television stations; table of assignments:
Louisiana; comments due by 11-27-00; published 10-10-00
Nevada; comments due by 11-27-00; published 10-6-00
New York; comments due by 11-27-00; published 10-6-00

LIST OF PUBLIC LAWS

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 ''PLUS'' (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.R. 1235/P.L. 106–467
To authorize the Secretary of the Interior to enter into contracts with the Solano County Water Agency, California, to use Solano Project facilities for impounding, storage, and carriage of nonproject water for domestic, municipal, industrial, and other beneficial purposes. (Nov. 9, 2000; 114 Stat. 2026)

H.R. 2780/P.L. 106–468
Kristen's Act (Nov. 9, 2000; 114 Stat. 2027)

H.R. 2884/P.L. 106–469
Energy Act of 2000 (Nov. 9, 2000; 114 Stat. 2029)

H.R. 4312/P.L. 106–470
Upper Housatonic National Heritage Area Study Act of 2000 (Nov. 9, 2000; 114 Stat. 2055)

H.R. 4646/P.L. 106–471
To designate certain National Forest System lands within the boundaries of the State of Virginia as wilderness areas. (Nov. 9, 2000; 114 Stat. 2057)

H.R. 4788/P.L. 106–472
Grain Standards and Warehouse Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2058)

H.R. 4794/P.L. 106–473
Washington-Rochambeau Revolutionary Route National Heritage Act of 2000 (Nov. 9, 2000; 114 Stat. 2083)

H.R. 4846/P.L. 106–474
National Recording Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2085)

H.R. 4864/P.L. 106–475
Veterans Claims Assistance Act of 2000 (Nov. 9, 2000; 114 Stat. 2096)

H.R. 4868/P.L. 106–476
Tariff Suspension and Trade Act of 2000 (Nov. 9, 2000; 114 Stat. 2101)

H.R. 5110/P.L. 106–477
To designate the United States courthouse located at 3470 12th Street in Riverside, California, as the ''George E. Brown, Jr. United States Courthouse''. (Nov. 9, 2000; 114 Stat. 2182)

H.R. 5302/P.L. 106–478
To designate the United States courthouse located at 1010 Fifth Avenue in Seattle, Washington, as the ''William Kenzo Nakamura United States Courthouse''. (Nov. 9, 2000; 114 Stat. 2183)

H.R. 5331/P.L. 106–479
To authorize the Frederick Douglass Gardens, Inc., to establish a memorial and gardens on Department of the Interior lands in the District of Columbia or its environs in honor and commemoration of Frederick Douglass. (Nov. 9, 2000; 114 Stat. 2184)

H.R. 5388/P.L. 106–480
To designate a building proposed to be located within the boundaries of the Chincoteague National Wildlife Refuge, as the ''Herbert H. Bateman Education and Administrative Center''. (Nov. 9, 2000; 114 Stat. 2186)

H.R. 5410/P.L. 106–481
Library of Congress Fiscal Operations Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2187)

H.R. 5478/P.L. 106–482
To authorize the Secretary of the Interior to acquire by donation suitable land to serve as the new location for the home of Alexander Hamilton, commonly known as the Hamilton Grange, and to authorize the relocation of the Hamilton Grange to the acquired land. (Nov. 9, 2000; 114 Stat. 2192)

H.J. Res. 102/P.L. 106–483
Recognizing that the Birmingham Pledge has made a significant contribution in fostering racial harmony and reconciliation in the United States and around the world, and for other purposes. (Nov. 9, 2000; 114 Stat. 2193)

S. 484/P.L. 106–484
Bring Them Home Alive Act of 2000 (Nov. 9, 2000; 114 Stat. 2195)

S. 610/P.L. 106–485
To direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes. (Nov. 9, 2000; 114 Stat. 2199)

S. 698/P.L. 106–486
To review the suitability and feasibility of recovering costs of high altitude rescues at Denali National Park and Preserve in the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2201)

S. 710/P.L. 106–487
Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2202)

S. 748/P.L. 106–488
To improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2205)

S. 893/P.L. 106–489
To amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels. (Nov. 9, 2000; 114 Stat. 2207)

S. 1030/P.L. 106–490
To provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws. (Nov. 9, 2000; 114 Stat. 2208)

S. 1367/P.L. 106–491
To amend the Act which established the Saint-Gaudens National Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes. (Nov. 9, 2000; 114 Stat. 2209)

S. 1438/P.L. 106–492
National Law Enforcement Museum Act (Nov. 9, 2000; 114 Stat. 2210)

S. 1778/P.L. 106–493
To provide for equal exchanges of land around the Cascade Reservoir. (Nov. 9, 2000; 114 Stat. 2213)

S. 1894/P.L. 106–494
To provide for the conveyance of certain land to Park County, Wyoming. (Nov. 9, 2000; 114 Stat. 2214)

S. 2069/P.L. 106–495
To permit the conveyance of certain land in Powell, Wyoming. (Nov. 9, 2000; 114 Stat. 2216)

S. 2425/P.L. 106–496
Bend Feed Canal Pipeline Project Act of 2000 (Nov. 9, 2000; 114 Stat. 2218)

S. 2872/P.L. 106–497
Indian Arts and Crafts Enforcement Act of 2000 (Nov. 9, 2000; 114 Stat. 2219)

S. 2882/P.L. 106–498
Klamath Basin Water Supply Enhancement Act of 2000 (Nov. 9, 2000; 114 Stat. 2221)

S. 2951/P.L. 106–499

To authorize the Secretary of the Interior to conduct a study to investigate opportunities to better manage the water resources in the Salmon Creek watershed of the Upper Columbia River. (Nov. 9, 2000; 114 Stat. 2223)

S. 2977/P.L. 106–500

To assist in establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles. (Nov. 9, 2000; 114 Stat. 2224)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
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[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.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

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