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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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: Tuesday, April 17, 2001 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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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 66, No. 62
Friday, March 30, 2001

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 2129–01]

RIN 1115–AG16

Adding Colombia to the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Transit Without Visa (TWOV) Program allows certain aliens to transit the United States en route to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service (Service) in accordance with section 233(c) of the Immigration and Nationality Act (Act). This interim rule adds Colombia to the list of those countries that the Service, acting on behalf of the Attorney General and jointly with the Department of State, has determined to be ineligible for participation in the TWOV program.

DATES: *Effective dates:* Amendment 2 of this interim rule is effective April 2, 2001. Amendment 3 of this interim rule is effective April 6, 2001.

Comment date: Written comments must be submitted on or before May 29, 2001.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. Please include INS number 2129–01 on your correspondence to ensure proper and timely handling. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW, Room 4064, Washington, DC 20536, telephone number (202) 616–7499.

SUPPLEMENTARY INFORMATION:

What Is the Authority for Participation in the TWOV Program?

Section 212(d)(4)(C) of the Act provides authority for the Attorney General acting jointly with the Secretary of State (see Department of State regulation published elsewhere in this issue of the **Federal Register**) to waive nonimmigrant visa requirements for aliens who are proceeding in immediate and continuous transit through the United States and are using a carrier which has entered into a contract with the Service authorized under section 233(c) of the Act, in this case an Immediate and Continuous Transit Agreement on Form I–426, also known as a TWOV Agreement.

How Does This Interim Rule Amend the Regulations?

This rule amends § 212.1(f)(3) (section 212.1(f)(3) will be redesignated and revised as § 212.1(f)(2) effective April 6, 2001) by adding Colombia to the list of countries whose citizens are ineligible for TWOV privileges.

Why Is Colombia Being Added to the Ineligibility List in § 212.1(f)(3)?

Colombia is being added to § 212.1(f)(3) (section 212.1(f)(3) will be redesignated and revised as § 212.1(f)(2) effective April 6, 2001) making the waiver of the passport and visa requirement unavailable to an alien who is a citizen of that country (e.g., ineligible for TWOV privileges) because a steadily increasing number of Colombian citizens and nationals have exhibited a significant probability to abuse the TWOV privilege.

How Have Certain Citizens of Colombia Abused the TWOV Privilege?

During the period between October 1, 2000, and February 28, 2001, approximately 600 Colombian citizens who boarded their respective flights as TWOV passengers, purportedly in transit through Miami International Airport to a third country, refused to depart the United States within the timeframes established by the TWOV program. Consequently, and at a cost to the United States Government, these aliens were placed into administrative proceedings to determine whether they could remain in the United States. Indeed, the number of Colombian citizens who used TWOV privileges to come to the United States and then refused to depart timely increased from 22 in October 2000, to 56 in November, 110 in December, 161 in January 2001, and 248 in February. This represents a large increase over the 29 such incidents that occurred in fiscal year 2000 (a rate of less than three instances a month). This trend represents an escalating trend and an abuse of the TWOV privilege.

Good Cause Exception

The implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and 553(d)(3). The effective date of this rule on April 2, 2001 is necessary to prevent an anticipated sharp increase in the abuse of the TWOV privilege by citizens of Colombia in the near future. Further, there is a reasonable concern that publication of this rule with an effective date 30 or 60 days after publication could lead to the counter-productive result of a surge of individuals attempting to make fraudulent use of the TWOV privilege. Since prior notice and public comments with respect to this interim rule are impractical and contrary to public interest, there is good cause under 5 U.S.C. 553 to make this rule effective on April 2, 2001.

Regulatory Flexibility Act

The Acting Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs whether a citizen of a particular country may transit the United States under the TWOV program. These aliens are not considered small entities as that term is defined under 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any 1-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988—Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and Visas.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.1(f)(3), currently in effect, is amended by adding ''Colombia,'' in proper alphabetical sequence effective April 2, 2001.

3. Section 212.1(f)(2), as redesignated and revised at 66 FR 1018, effective April 6, 2001, is amended by adding ''Colombia,'' in proper alphabetical sequence effective April 6, 2001.

Dated: March 23, 2001.

Mary Ann Wyrsch,

Acting Commissioner, Immigration and Naturalization, Service.

[FR Doc. 01–7914 Filed 3–29–01; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1042]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for comments.

SUMMARY: The Board is adopting an interim rule amending Regulation M, which implements the Consumer Leasing Act, to establish a uniform standard for the timing of the electronic delivery of disclosures required by the act and regulation. The rule provides guidance on the timing and delivery of electronic disclosures to ensure lessees have adequate opportunity to access and retain cost information when shopping for a lease or becoming obligated for a lease. (Similar rules are being adopted under other consumer financial services and fair lending regulations administered by the Board.) Under the rule, lessors may deliver disclosures electronically if they obtain lessees' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act. The rule is being adopted as an interim rule to allow for additional public comment.

DATES: The interim rule is effective March 30, 2001; however, to allow time for any necessary operational changes, the mandatory compliance date is October 1, 2001. Comments must be received by June 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1042, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, or David A. Stein, Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq*. The CLA requires lessors to provide lessees with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act. The Board's Regulation M (12 CFR part 213) implements the act.

The CLA and Regulation M require disclosures to be provided in writing, presuming that lessors provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.), however, electronic documents and signatures have the same validity as paper documents and handwritten signatures.

Board Proposals Regarding Electronic Disclosures

Over the past few years, the Board has published several interim rules and proposals regarding the electronic delivery of disclosures. In 1996, after a comprehensive review of Regulation E (Electronic Fund Transfers), the Board proposed to amend the regulation to permit financial institutions to provide

disclosures by sending them electronically. (61 FR 19696, May 2, 1996) Based on comments received on the 1996 proposal, on March 25, 1998, the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528) and similar proposals under Regulation M (63 FR 14538), and other financial services and fair lending regulations administered by the Board. The 1998 interim rule and proposed rules were similar to the 1996 proposed rule under Regulation E.

The 1998 proposals and interim rule allowed depository institutions, creditors, lessors, and others to provide disclosures electronically if the consumer agreed, with few other requirements. For ease of reference, this background section uses the terms ''institutions'' and ''consumers.''

Industry commenters generally supported the Board's 1998 proposals and interim rule, but many of them sought specific revisions and additional guidance on how to comply with the disclosure requirements in certain transactions and circumstances. In particular, they expressed concern that the rule did not specify a uniform method for establishing that an ''agreement'' was reached for sending disclosures electronically. Consumer advocates, on the other hand, generally opposed the 1998 proposals and the interim rule. They believed that consumer protections in the proposals were inadequate, especially in connection with transactions that are typically consummated in person (such as automobile loans and leases, home-secured loans, and door-to-door credit sales).

September 1999 Proposals

In response to comments received on the 1998 proposals, the Board published revised regulatory proposals in September 1999 under Regulations B, E, M, Z, and DD, (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999) (collectively, the ''1999 proposals''), and an interim rule under Regulation DD (64 FR 49846). The interim rule under Regulation DD allowed depository institutions to deliver disclosures on periodic statements electronically if the consumer agrees.

Generally, the 1999 proposals required institutions to use a standardized form containing specific information about the electronic delivery of disclosures so that consumers could make informed decisions about whether to receive disclosures electronically. If the consumer affirmatively consented, most disclosures could be provided electronically. To address concerns about potential abuses, the 1999 proposals generally would have required disclosures to be given in paper form when consumers transacted business in person. The proposals contained rules for disclosures that are made available to consumers at an institution's Internet web site (governing, for example, how long disclosures must remain posted at a web site).

Comments on the September 1999 Proposals

The Board received letters representing 115 commenters expressing views on the revised proposals. Industry commenters generally supported the Board's approach of establishing federal rules for a uniform method of obtaining consumers' consumer to the receipt of electronic disclosures instead of deferring to state law. Still, many sought specific additional guidance and in some cases wanted more flexibility. They were concerned about the length of time the proposals would have required electronic disclosures to remain available to a consumer at an institution's Internet web site or upon request. In addition, they believed the proposed rule requiring paper disclosures for mortgage loans closed in person was not sufficiently flexible. Consumer advocates believed the 1999 proposals addressed many of their concerns about the 1998 proposals. Nevertheless, they urged the Board to incorporate greater protections for consumers, such as restricting the delivery of electronic disclosures to only those consumers who initiate transactions electronically.

The Board also obtained views through four focus groups with individual consumers, conducted in the Washington-Baltimore metropolitan area. Participants reviewed and commented on the format and content of the proposed sample consent forms, as well as on alternative revised forms.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed the E-Sign Act, which was enacted to encourage the continued expansion of electronic commerce. The E-Sign Act generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures. The act contains special rules for the use of electronic disclosures in consumer transactions. Consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving certain information specified in the statute.

The Board and other government agencies are permitted to interpret the E-Sign Act's consumer consent requirements within prescribed limits, but may not impose additional requirements for consumer consent. In addition, agencies generally may not re-impose a requirement for using paper disclosures in particular transactions, such as those conducted in person.

The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to use electronic disclosures under Regulations B, E, M, Z and DD if the consumer affirmatively consents in the manner required by the E-Sign Act.

II. The Interim Rule

The Board is adopting an interim final rule to establish uniform standards for the electronic delivery of disclosures required under Regulation M. Consistent with the requirements of the E-Sign Act, lessors must obtain lessee's affirmative consent to provide disclosures electronically.

The interim rules also establish uniform requirements for the timing and delivery of electronic disclosures. Disclosures may be sent by e-mail to an electronic address designated by the lessee, or they may be made available at another location, such as an Internet web site. If the disclosures are not sent by e-mail, lessees must receive a notice alerting them to the availability of the disclosures. Disclosures posted on a web site must be available for at least 90 days, to allow lessees adequate time to access and retain the information. With regard to the timing of electronic disclosures, lessees are required to access the disclosures before becoming obligated on a lease. Under the interim rule, lessors must make a good faith attempt to redeliver electronic disclosures that are returned undelivered, using the address information available in their files. Similar rules are being adopted under Regulations B, E, Z, and DD.

III. Request for Comment

Interim Rules

The interim rules include most of the revisions that were part of the 1999 proposals and were not affected by the E-Sign Act. The Board is adopting these rules with some minor changes discussed below. The rules are adopted as interim rules, to allow commenters to

present new information or views not previously considered in the context of the 1998 and 1999 proposals. Since the Board's 1999 proposals were issued, more institutions have gained experience in offering financial services electronically. The Board believes that additional comments, beyond those previously considered in connection with the Board's earlier proposals, might inform the Board whether any developments in technology or industry practices have occurred that warrant further changes in the rules. The comment period ends on June 1, 2001. The Board expects to adopt final rules on a permanent basis prior to October 1, 2001.

Interpreting E-Sign Provisions

Under section 104(b) of the E-Sign Act, the Board and other government agencies are permitted to interpret the act, within prescribed limits. The Board may issue rules that interpret how the E-Sign Act's consumer consent requirements apply for purposes of the laws administered by the Board. Also, the Board may, by regulation, exempt a particular category of disclosures from the E-Sign Act's consumer consent requirements if it will eliminate a substantial burden on electronic commerce without creating material risk for consumers.

The Board requests comment on whether the Board should exercise its authority under the E-Sign Act in future rulemakings to interpret the consumer consent provisions, or other provisions of the act, as they affect the Board's consumer protection regulations. Comment is requested on whether the statutory provisions relating to consumer consent are sufficient, or whether additional guidance is needed. For example, is interpretative guidance needed concerning the statutory requirement that lessees confirm their consent electronically in a manner that reasonably demonstrates they can access information in the form to be used by the lessor? Is clarification needed on the effect of lessees withdrawing their consent, or on requesting paper copies of electronic disclosures? Lessors must also inform lessees of changes in hardware and software requirements if the change creates a material risk that the lessee will not be able to access or retain the disclosure. The Board solicits comment on whether regulatory standards are needed for determining a ''material risk'' for purposes of Regulation M and other financial services and fair lending laws administered by the Board, and if so what standards should apply.

Under section 104(d) of the E-Sign Act, the Board is authorized to exempt specific disclosures from the consumer consent requirements of section 101(c) of the E-Sign Act, if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. The Board requests comment on whether it should consider exercising this exemption authority.

Study on Adapting Requirements to Online Banking and Lending

The E-Sign Act eliminated legal impediments to the use of electronic records and signatures. The Board requests comment on whether other legislative or regulatory changes are needed to adapt current requirements to online banking and lending and facilitate electronic delivery of consumer financial services.

The comments may assist the Board in future efforts to update the regulations. The comments may also be used in connection with a study required under the Gramm-Leach-Bliley Act of 1999. That act requires the federal bank supervisory agencies to conduct a study of banking regulations that affect the electronic delivery of financial services and to submit to the Congress a report recommending any legislative changes that are needed to facilitate online banking and lending.

IV. Section-by-Section Analysis

Pursuant to its authority under section 187 of the CLA, the Board amends Regulation M to establish uniform standards for the use of electronic communication to provide disclosures required by this regulation. Electronic disclosures can effectively reduce compliance costs without adversely affecting consumer protections. Leasing disclosures are typically provided in the lease contract, but disclosures can be provided in a separate statement or in the lease contract or other document evidencing the lease. Leases are not typically be consummated on-line, but consumers are able to shop and apply for leases on-line. The purpose of the Regulation M disclosures is to ensure that consumers have meaningful information about lease terms and to promote comparison shopping. The use of electronic communication may allow lessors to provide Regulation M disclosures to consumers earlier in the leasing process. To the extent that a lessor may make electronic disclosures available at its Internet web site instead of providing the disclosures directly to the lessee, the Board finds that such an exception is warranted, acting pursuant to its authority under section 105(a) of TILA. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to changes in the official staff commentary.

Section 213.3 General Disclosure Requirements

3(a) General Requirements

Section 213.3(a)(5) is added to provide a cross reference to rules governing the electronic delivery of disclosures in § 213.6.

Section 213.6 Electronic Communication

6(a) Definition

As adopted, the definition of the term ''electronic communication'' remains substantially unchanged from the 1999 proposals. Section 213.6(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text; an example is a message displayed on a personal computer monitor screen. Thus, audio- and voice-response telephone systems are not included. Because the rule permits the use of electronic communication to satisfy the statutory requirement for written disclosures that must be clear and conspicuous, the Board believes visual text is an essential element of the definition.

Some commenters asked for clarification that the definition was not intended to preclude the use of devices other than personal computers, which also can display visual text. The equipment on which the text message is received is not limited to a personal computer, provided the visual display used to deliver the disclosures meets the ''clear and conspicuous'' format requirement, discussed below.

6(b) General Rule

Effective October 1, 2000, the E-Sign Act permits lessors to provide disclosures using electronic communication, if the lessor complies with consumer consent requirements in section 101(c). Under section 101(c) of the E-Sign Act, lessors must provide specific information about the electronic delivery of disclosures before obtaining the lessee's affirmative consent to receive electronic disclosures. The consent requirements in the E-Sign Act are similar but not identical to the Board's 1999 proposal. Accordingly, § 213.6(b) sets forth the general rule that lessors subject to Regulation M may provide disclosures electronically if the lessor complies with section 101(c) of the E-Sign Act.

The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under the CLA other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. Comment 6(b)–1 contains this guidance.

Presenting Disclosures in a Clear and Conspicuous Format

Electronic disclosures must be clear and conspicuous as is the case for all written disclosures under the CLA and Regulation M. See § 213.3(a). A lessor must provide electronic disclosures using a clear and conspicuous format. Also in accordance with the E-Sign Act: (1) The lessor must disclose the requirements for accessing and retaining disclosures in that format; (2) the lessee must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and (3) the lessor must provide the disclosures in accordance with the specified requirements. Comment 6(b)–2 contains this guidance.

Commenters asked about the use of navigational tools with electronic disclosures. For example, some believed that such tools might be helpful in directing consumers to related information that explains the terminology used in the disclosures. Many Internet web sites use navigational tools that are conspicuous through the use of bold text, larger fonts, different colors, underlining, or other methods of highlighting. Such tools are not per se prohibited so long as they are not used in a manner that would violate the clear and conspicuous standard.

Providing Timely Disclosures

Disclosures delivered electronically must comply with existing timing requirements under the CLA and Regulation M. See § 213.3(a)(3). Disclosures generally must be provided before the lessee becomes obligated. For example, if a lessor permits the lessee to lease a vehicle on-line, the lessee must be required to access the disclosures required under § 213.4 before becoming obligated. A link to the disclosures satisfies the timing rule if the lessee cannot bypass the disclosures before becoming obligated. Or the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. Comment 6(b)–3 contains this guidance.

The CLA and Regulation M require that disclosures be given to lessees. It is not sufficient for lessors to provide a bypassable navigational tool that merely gives lessees the option of receiving disclosures. Such an approach reduces the likelihood that lessees will notice and receive the disclosures. The final rule ensures that lessees see cost disclosures provided electronically so that they have the opportunity to read them when shopping for a lease or before becoming obligated for a lease.

Commenters on the various proposals requested guidance regarding an institution's duty in cases where the institution cannot provide timely disclosures because automated equipment controlled by the institution malfunctions or otherwise fails to operate properly. To the extent applicable in connection with a lease transaction, if a lessor controls the equipment and disclosures are required at that time, a lessor might not be liable for failing to provide timely disclosures if the defense in section 130(c) of TILA is available.

Providing Disclosures in a Form the Consumer May Keep

Under the CLA and Regulation M, disclosures required to be in writing also must be in a form the consumer can retain. (See § 213.3(a).) Electronic disclosures are subject to this requirements. Comment 6(b)–4 contains guidance on this requirement.

Lessees may communicate electronically with lessors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a lessee may not have the ability at a given time to preserve CLA disclosures presented on-screen. To ensure that lessees have an adequate opportunity to access and retain the disclosures, the lessor also must send them to the lessee's designated e-mail address or make them available at another location, for example, on the lessor's Internet web site, where the information may be retrieved at a later date.

To the extent applicable in connection with a lease transaction, if a lessor controls the equipment providing the electronic disclosures (for example, a computer terminal located in the lessor's place of business) the lessor must ensure that the lessee has the opportunity to retain the required information. Comment 6(b)–5 contains guidance on this requirement.

6(c) When Consent is Required

Under the E-Sign Act, consumers must affirmatively consent before they receive electronic disclosures ''relating to a transaction'' if the disclosures are required by law or regulation to be in writing. Section 213.6(c) is added to provide that disclosures required in advertisements are not deemed to be related to a transaction for purposes of the E-Sign Act's consumer consent provision.

6(d) Address or Location to Receive Electronic Communication

Consistent with the 1999 proposals, the interim rule provides that lessors may deliver electronic disclosures by sending them to a lessee's e-mail address. Alternatively, the rule provides that lessors may make the disclosures available at another location such as an Internet web site. If the lessor makes a disclosure available at such a location, the lessor effectively delivers the disclosure by sending a notice alerting the lessee when the disclosure can be accessed and preserving the disclosure at the location for at least 90 days. The time period for keeping disclosures available at a location such as a lessor's Internet web site under the interim rule differs from the 1999 proposals, based on commenters' concerns as discussed below.

6(d)(1)

For purposes of § 213.6(d), a lessee's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the lessor. This guidance is contained in comment 6(d)(1)–1.

6(d)(2)

As proposed, under § 226.36(d)(2)(ii) of the interim rule, disclosures provided at an Internet web site must remain available for at least 90 days. The requirement seeks to ensure that lessees have adequate time to access and retain a disclosure under a variety of circumstances, such as when a lessee may not be able for an extended period of time to access the information due to computer malfunctions, travel, or illness. Comment 6(d)(2)–1 is added to provide that during this period, the actual disclosures must be available to the lessee, but the lessor has discretion to determine whether they should be available at the same location for the entire period.

Some commenters on the various proposals believed the 90-day time period is reasonable and feasible. About an equal number of commenters believed it was too burdensome and costly; some of these commenters suggested periods that ranged from 30 to 60 days.

The 1999 proposals provided that after the 90-day time period, disclosures would be available upon consumers'

request, generally for 24 months, in the same format as initially provided to the consumer. The 24-month period is consistent with a lessor's duty to retain records that evidence compliance. Consumer advocates supported the proposed retention period; some recommended that disclosures should be available upon request for the length of the contractual relationship with the consumer.

Industry commenters strongly opposed the 24-month period. Many believed that keeping copies of electronic disclosures actually provided to consumers for that period of time would be costly and burdensome. Moreover, industry commenters believed that once a consumer has accessed the disclosures, the consumer rather than the lessor should have the duty to retain them for future reference. They also noted that under existing record retention requirements applicable to paper disclosures, a lessor need only demonstrate compliance with the rules, but need not retain copies of the actual disclosure provided to consumers.

The requirement for lessors to provide duplicate disclosures upon request for 24 months has not been adopted. A lessor's duty to retain evidence of compliance for 24 months remains unchanged.

6(d)(3) Exception

Section 213.6(d)(3) is added to make clear that the requirements of paragraphs (i) and (ii) of § 213.6(d)(2) do not apply to disclosures in lease advertisements (§ 213.7).

6(e) Redelivery

Industry commenters on the 1998 proposal asked for clarification that sending the electronic disclosures complies with the regulation, and the institutions are not required to confirm that the consumer actually received them. Consumer advocates asked that institutions be required to verify the delivery of disclosures by return receipt, in the case of e-mail. In the 1999 proposals, the Board solicited comment on the need for and the feasibility of such a requirement.

Consumer advocates believe that e-mail systems are not yet sufficiently reliable, and that safeguards are necessary to ensure that consumers actually receive disclosures. Industry commenters stated that a return receipt requirement would be costly and burdensome, and would require lessors to monitor return receipts in every case to determine that an individual consumer received the disclosures.

Section 101(c) of the E-Sign Act requires that consumers consent electronically, or confirm their consents electronically, in a manner that reasonably demonstrates that the consumer can access the information that the lessor will be providing. This requirement seeks to verify at the outset that the consumer is actually capable of receiving the information in the electronic format being used by the lessor. After the consumer consents, the E-Sign Act also requires lessors to notify consumers of changes that materially affect consumer's ability to access electronic disclosures.

The interim rule does not impose a verification requirement because the cost and burden associated with verifying delivery of all disclosures would not be warranted. When electronic disclosures are returned undelivered, however, § 213.6(e) imposes a duty to attempt redelivery (either electronically or to a postal address) based on address information in the lessor's own files. Unlike paper disclosures delivered by the postal service, there generally is no commonly-accepted mechanism for reporting a change in e-mail or for forwarding e-mail. Where a lessor actually knows that the delivery of an electronic disclosure did not take place, the lessor should take reasonable steps to effectuate delivery in some way. For example, if an e-mail message to the lessee (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if the lessor sends the disclosure to a different e-mail address or postal address that the lessor has on file for the lessee. Sending the disclosures a second time to the same electronic address would not be sufficient if the lessor has a different address for the lessee on file. Comment 6(e)–1 provides this guidance.

This redelivery requirement is limited to situations where the electronic communication cannot be delivered and does not apply to situations where the disclosure is delivered but, for example, cannot be read by the lessee due to technical problems with the lessee's software. A lessor's duty to redeliver a disclosure under § 213.6(e) does not affect the timeliness of the disclosure. Lessors comply with the timing requirements of the regulation when a disclosure is sent in a timely manner, even though the disclosure is returned undelivered and the lessor is required under § 213.6(e) to take reasonable steps to attempt redelivery.

Section 213.7 Advertising

7(b) Clear and Conspicuous Standard

7(b)(1) Amount Due at Lease Signing or Delivery

Under § 213.7(b)(1), a lease advertisement cannot refer to a component of the total amount due prior to or at consummation or by delivery (except for the periodic payment amount) more prominently than the total amount due. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any other § 213.4 disclosure stated in the advertisement. Comment 7(b)(1)–3 contains guidance on how this rule applies in an electronic advertisement.

7(b)(2) Advertisement of a Lease Rate

Under § 213.7(b)(2), a lessor that advertises a percentage rate must include a statement about the limitations of the rate in close proximity to the rate without any other intervening language or symbols. Comment 7(b)(2)-1 is revised to provide guidance on how this rules applies in an electronic advertisement.

7(c) Catalogs and Other Multi-Page Advertisements; Electronic Advertisements

Stating certain credit terms in an advertisement for a lease triggers the disclosure of additional terms. Section 213.7(c) permits lessors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering lease terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. The Board proposed to extend the multiple-page advertisement provisions to electronic advertisements and provided that lessors complied with § 213.7(c) if the table or schedule with the additional information is set forth clearly and conspicuously and the triggering lease terms appearing anywhere else in the advertisement clearly refer to the page or location where the table or schedule begins. Comment 7(c)-2 is revised to reflect this guidance.

Additional Issues

Document Integrity

The interim rule does not impose document integrity standards. Consumer advocates and others expressed concerns that electronic documents can be altered more easily than paper documents. They say that consumers' ability to enforce rights under the consumer protection laws could be impaired, in some cases, if the

authenticity of disclosures they retain cannot be demonstrated.

Institutions are generally required to retain evidence of compliance with the Board's consumer regulations. Accordingly, the Board requested comment on the feasibility of requiring institutions to have systems in place capable of detecting whether or not information has been altered, or to use independent certification authorities to verify disclosure documents.

Consumer advocates strongly supported document integrity requirements (including the use of certification authorities) that would apply to all-electronic disclosures. Signatures, notary seals, and verification procedures such as recordation are used to protect against alterations for transactions memorialized in paper form. Consumer advocates believe that comparable verification procedures are needed for electronic disclosures as well.

Industry commenters opposed mandatory document integrity standards for electronic disclosures. Because the technology in this area is still evolving, they believe that mandatory standards would be premature. Others believe that imposing document integrity standards or requiring the use of certification authorities would be costly to implement.

The Board recognizes the concerns about document integrity, but believes it is not practicable at this time to impose document integrity standards for consumer disclosures or mandate the use of independent certification authorities. Effective methods may be too costly. Other less costly methods may deter alterations in some cases, but would not necessarily ensure document integrity.

Moreover, the issue of document integrity affects electronic commerce generally and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Section 104(b)(3) of the E-Sign Act authorizes federal or state regulatory agencies to specify performance standards to assure the accuracy, record integrity, and accessibility of records that are required to be retained, but prohibits the agencies from requiring the use of a particular type of software or hardware in order to comply with record retention requirements. Technology is likely to develop to protect electronic contracts and other legal documents. Thus, it seems premature for the Board to specify any particular standards or methods for consumer disclosure at this time.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1042, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

VI. Regulatory Flexibility Analysis

The Board has reviewed these interim amendments to Regulation M, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604). Two of the three requirements of a final regulatory flexibility analysis under the Act are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of those issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. This interim final rule is designed to provide lessors with an alternative method of providing disclosures; the rule will relieve compliance burden by giving lessors flexibility in providing disclosures required by the regulation. Overall, the costs of providing electronic disclosures are not expected to have significant impact on small entities. The expectation is that providing electronic disclosures may ultimately reduce the costs associated with providing disclosures.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0202.

The collection of information that is revised by this rulemaking is found in 12 CFR Part 213.3, 213.4, 213.5, 213.7, 213.8 and in Appendix A. This information is mandatory (15 U.S.C. 1667 *et seq.*) to evidence compliance with the requirements of the Regulation M and the Consumer Leasing Act (CLA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The revisions provide that lessors may deliver disclosures electronically upon obtaining consumers' affirmative consent in accordance with the E-Sign Act. The revisions provide guidance to institutions on the timing and delivery of electronic disclosures, to ensure that consumers have adequate opportunity to access and retain the information. With respect to state member banks, it is estimated that there are 310 respondent/recordkeepers and an average frequency of 6,200 responses per respondent each year. The current annual burden is estimated to be 11,179 hours. No comments specifically addressing the burden estimate were received, therefore, the numbers remain unchanged. There is estimated to be no additional cost burden and no capital or start up cost associated with the interim final rule.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act.

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503.

VIII. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January

1, 2000. The Board invites comments on whether the interim rule is clearly stated and effectively organized, and how the Board might make the rule easier to understand.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and record keeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604; 1667f.

2. Section 213.3 is amended by adding a new paragraph (a)(5) to read as follows:

§ 213.3 General disclosure requirements.

(a) *General requirements.* * * *

(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 213.6.

3. Section 213.6 is added to read as follows:

§ 213.6 Electronic communication.

(a) *Definition.* ''Electronic communication'' means a message transmitted electronically between a lessor and a lessee in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a lessor may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When consent is required.* Under the E-Sign Act, a lessor is required to obtain a lessee's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under § 213.7 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A lessor that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the consumer's electronic address; or

(2) Make the disclosure available at another location such as a web site; and

(i) Alert the lessee of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the lessor's option). The notice shall identify the transaction involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the lessee of the disclosure, whichever comes later.

(3) *Exceptions.* A lessor need not comply with paragraph (d)(2)(i) and (ii) of this section for the disclosures required under § 213.7.

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a lessor undelivered, the lessor shall take reasonable steps to attempt redelivery using information in its files.

4. In Supplement I to Part 213, the following amendments are made:

a. A new *Section 213.6—Electronic Communication* is added.

b. *In Section 213.7—Advertising,* under *7(b)(1) Amount due at Lease Signing or Delivery,* a new paragraph 3. is added.

c. In *Section 213.7—Advertising,* under *7(b)(2) Advertisement of a Lease Rate,* paragraph 1. is revised.

d. In *Section 213.7—Advertising*, the heading *7(c) Catalogs and Multi-Page advertisements* is revised and paragraph 12 is redesignated as paragraph 2 and revised.

The amendments read as follows:

Supplement I to Part 213 Official Staff Commentary to Regulation M

* * * * *

Section 213.6—Electronic Communication

6(b) General rule

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text.

2. *Clear and conspicuous standard.* A lessor must provide electronic disclosures using a clear and conspicuous format. Also in accordance with the E-Sign Act:

i. The lessor must disclose the requirements for accessing and retaining disclosures in that format;

ii. The lessee must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and

iii. The lessor must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery.* When a lessor permits the lessee to consummate a lease transaction on-line, the lessee must be required to access the required disclosures before becoming obligated. A link to the disclosures satisfies the timing rule if the lessee cannot bypass the disclosures before becoming obligated. Or the disclosures in this example must automatically appear on screen, even if multiple screens are required to view the entire disclosure. The lessor is not required to confirm that the lessee has read the disclosures.

4. *Retainability of disclosures.* A lessor satisfies the requirement that disclosures be in a form that the lessee may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

5. *Disclosures provided on lessor's equipment.* To the extent applicable in connection with a lease transaction, a lessor that controls the equipment providing electronic disclosures to lessees (for example, a computer terminal in a lessor's place of business) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the lessee may keep. For example, if disclosures are required at the time of an on-line transaction, the disclosures must be sent to the lessee's e-mail address or must be made available at another location such as the lessor's Internet web site, unless the lessor provides a printer that automatically prints the disclosures.

6(d) Address or Location to Receive Electronic Communication

Paragraph 6(d)(1)

1. *Electronic address.* A lessee's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the lessor.

Paragraph 6(d)(2)

1. *90-day rule.* The actual disclosures provided to a lessee must be available for at least 90-days, but the lessor had discretion to determine whether they should be available at the same location for the entire period.

6(e) Redelivery.

1. *E-mail message returned as undeliverable.* If an e-mail message to the lessee (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the lessor sends the disclosure to a different e-mail address or postal address that the lessor has on file for the lessee. Sending the disclosures a second time to the same electronic address is not sufficient if the lessor has a different address for the lessee on file.

Section 213.7—Advertising

* * * * *

7(b)(1) Amount Due at Lease Signing or Delivery

* * * * *

3. *Electronic advertisements.* For advertisements using electronic communication, to satisfy the prominence rule in § 213.7(b)(1), both the triggering terms and the required disclosures must appear in the same location so that they can be viewed simultaneously.

7(b)(2) Advertisement of a Lease Rate

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any other § 213.4 disclosure stated in the advertisement. For advertisements using electronic communication, to comply with proximity rule in, both the rate and the accompanying notice must appear in the same location so that they can be viewed simultaneously. The prominent rule in § 213.7(b)(2) is not met if the disclosures can be viewed only by use of a link that connects the consumer to the information appearing at another location.

7(c) Catalogs or Other Multipage Advertisements; Electronic Advertisements

* * * * *

2. *Cross references.* A catalog or other multiple-page advertisement or an electronic advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under § 213.7(d)(2)(i) through (v). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog, or in a multiple-page or electronic advertisement, it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information (but see comments under § 213.7(b) about rules regarding the prominence of disclosures).

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 23, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–7726 Filed 3–29–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1043]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; request for comments.

SUMMARY: The Board is adopting an interim final rule amending Regulation Z, which implements the Truth in Lending Act, to establish uniform standards for the electronic delivery of disclosures required by the act and regulation. The rule provides guidance on the timing and delivery of electronic disclosures to ensure consumers have adequate opportunity to access and retain cost information when shopping for credit or before becoming obligated for an extension of credit. (Similar rules are being adopted under other consumer financial services and fair lending regulations administered by the Board.) Under the rule, creditors may deliver disclosures electronically if they obtain consumers' affirmative consent in accordance with the Electronic Signatures in Global and National Commerce Act. In addition, the regulation is revised to allow creditors to provide disclosures in foreign languages. The rule is being adopted as an interim rule to allow for additional public comment.

DATES: The interim rule is effective March 30, 2001; however, to allow time for any necessary operational changes, the mandatory compliance date is October 1, 2001. Comments must be received by June 1, 2001.

ADDRESSES: Comments, which should refer to Docket No. R–1043, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 in the Board's Martin Building between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel; Kathleen Ryan, Senior Attorney; or Deborah J. Stipick, Attorney; Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to promote the informed use of credit and assist in shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings.

TILA and Regulation Z require a number of disclosures to be provided in writing, presuming that creditors provide paper documents. Under the Electronic Signatures in Global and National Commerce Act (the E-Sign Act)(15 U.S.C. 7001 *et seq.*), however, electronic documents and signatures have the same validity as paper documents and handwritten signatures.

Board Proposals Regarding Electronic Disclosures

Over the past few years, the Board has published several interim rules and proposals regarding the electronic delivery of disclosures. In 1996, after a comprehensive review of Regulation E (Electronic Fund Transfers), the Board proposed to amend the regulation to permit financial institutions to provide disclosures by sending them electronically (61 FR 19696, May 2, 1996). Based on comments received on the 1996 proposal, on March 25,1998, the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14528) and similar proposals under Regulation Z (63 FR 14548) and other financial services and fair lending regulations administered by the Board. The 1998 interim rule and proposed rules were similar to the 1996 proposed rule under Regulation E.

The 1998 proposals and interim rule allowed depository institutions, creditors, lessors, and others to provide disclosures electronically if the consumer agreed, with few other requirements. For ease of reference, this background section uses the terms ''institutions'' and ''consumers.''

Industry commenters generally supported the Board's 1998 proposals and interim rule, but many of them sought specific revisions and additional guidance on how to comply with the

disclosure requirements in certain transactions and circumstances. In particular, they expressed concern that the rule did not specify a uniform method for establishing that an ''agreement'' was reached for sending disclosures electronically. Consumer advocates, on the other hand, generally opposed the 1998 proposals and the interim rule. They believed that consumer protections in the proposals were inadequate, especially in connection with transactions that are typically consummated in person (such as automobile loans and leases, home-secured loans, and door-to-door credit sales).

September 1999 Proposals

In response to comments received on the 1998 proposals, the Board published revised regulatory proposals in September 1999 under Regulations B, E, M, Z, and DD (64 FR 49688, 49699, 49713, 49722 and 49740, respectively, September 14, 1999) (collectively, the ''1999 proposals''), and an interim rule under Regulation DD (64 FR 49846). The interim rule under Regulation DD allowed depository institutions to deliver disclosures on periodic statements electronically if the consumer agrees.

Generally, the 1999 proposals required institutions to use a standardized form containing specific information about the electronic delivery of disclosures so that consumers could make informed decisions about whether to receive disclosures electronically. If the consumer affirmatively consented, most disclosures could be provided electronically. To address concerns about potential abuses, the 1999 proposals generally would have required disclosures to be given in paper form when consumers transacted business in person. The proposals contained rules for disclosures that are made available to consumers at an institution's Internet web site (governing, for example, how long disclosures must remain posted at a web site).

Comments on the September 1999 Proposals

The Board received letters representing 115 commenters expressing views on the revised proposals. Industry commenters generally supported the Board's approach of establishing federal rules for a uniform method of obtaining consumers' consent to the receipt of electronic disclosures instead of deferring to state law. Still, many sought specific additional guidance and in some cases wanted more flexibility. They were concerned about the length of time the proposals would have required electronic disclosures to remain available to a consumer at an institution's Internet web site or upon request. In addition, they believed the proposed rule requiring paper disclosures for mortgage loans closed in person was not sufficiently flexible. In addition, they believed the proposed rule requiring paper disclosures for mortgage loans closed in person was not sufficiently flexible. Consumer advocates believed the 1999 proposals addressed many of their concerns about the 1998 proposals. Nevertheless, they urged the Board to incorporate greater protections for consumers, such as restricting the delivery of electronic disclosures to only those consumers who initiate transactions electronically.

The Board also obtained views through four focus groups with individual consumers, conducted in the Washington-Baltimore metropolitan area. Participants reviewed and commented on the format and content of the proposed sample consent forms, as well as on alternative revised forms.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed the E-Sign Act, which was enacted to encourage the continued expansion of electronic commerce. The E-Sign Act generally provides that electronic documents and signatures have the same validity as paper documents and handwritten signatures. The act contains special rules for the use of electronic disclosures in consumer transactions. Consumer disclosures may be provided in electronic form only if the consumer affirmatively consents after receiving certain information specified in the statute.

The Board and other government agencies are permitted to interpret the E-Sign Act's consumer consent requirements within prescribed limits, but may not impose additional requirements for consumer consent. In addition, agencies generally may not re-impose a requirement for using paper disclosures in particular transactions, such as those conducted in person.

The consumer consent provisions in the E-Sign Act became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to use electronic disclosures under Regulations B, E, M, Z and DD if the consumer affirmatively consents in the manner required by section 101(c) of the E-Sign Act. Under section 101(c)(5) of the E-Sign Act, consumers who consented prior to the effective date of the act to receive electronic disclosures as permitted by any law or regulation, are not subject to the consent requirements.

II. The Interim Rule

The Board is adopting an interim final rule to establish uniform standards for the electronic delivery of disclosures required under Regulation Z. Consistent with the requirements of the E-Sign Act, creditors generally must obtain consumer's affirmative consent to provide disclosures electronically.

The interim rules also establish uniform requirements for the timing and delivery of electronic disclosures. Disclosures may be sent by e-mail to an electronic address designated by the consumer, or they may be made available at another location, such as an Internet web site. If the disclosures are not sent by e-mail, consumers must receive a notice alerting them to the availability of the disclosures. Disclosures posted on a web site must be available for at least 90 days, to allow consumers adequate time to access and retain the information. With regard to the timing of electronic disclosures, for disclosures that must be provided before the consumer becomes obligated for an extension of credit, consumers are required to access the disclosures before becoming obligated. Under the interim rule, institutions must make a good faith attempt to redeliver electronic disclosures that are returned undelivered, using the address information available in their files. Similar rules are being adopted under Regulations B, E, M, and DD.

III. Request for Comment

Interim Rules

The interim rules include most of the revisions that were part of the 1999 proposals and were not affected by the E-Sign Act. The Board is adopting these rules with some minor changes discussed below. The rules are adopted as interim rules, to allow commenters to present new information or views not previously considered in the context of the 1998 and 1999 proposals. Since the Board's 1999 proposals were issued, more institutions have gained experience in offering financial services electronically. The Board believes that additional comments, beyond those previously considered in connection with the Board's earlier proposals, might inform the Board whether any developments in technology or industry practices have occurred that warrant further changes in the rules. The

comment period ends on June 1, 2001. The Board expects to adopt final rules on a permanent basis prior to October 1, 2001.

Interpreting E-Sign Provisions

Under section 104(b) of the E-Sign Act, the Board and other government agencies are permitted to interpret the act, within prescribed limits. The Board may issue rules that interpret how the E-Sign Act's consumer consent requirements apply for purposes of the laws administered by the Board. Also, the Board may, by regulation, exempt a particular category of disclosures from the E-Sign Act's consumer consent requirements if it will eliminate a substantial burden on electronic commerce without creating material risk for consumers.

The Board requests comment on whether the Board should exercise its authority under the E-Sign Act in future rulemakings to interpret the consumer consent provisions or other provisions of the act, as they affect the Board's consumer protection regulations. Comment is requested on whether the statutory provisions relating to consumer consent are sufficient, or whether additional guidance is needed. For example, is interpretative guidance needed concerning the statutory requirement that consumers confirm their consent electronically in a manner that reasonably demonstrates they can access information in the form to be used by the creditor? Is clarification needed on the effect of consumers' withdrawing their consent, or on requesting paper copies of electronic disclosures? Institutions must also inform consumers of changes in hardware or software requirements if the change creates a material risk that the consumer will not be able to access or retain the disclosure. The Board solicits comment on whether regulatory standards are needed for determining a ''material risk'' for purposes of Regulation Z and other financial services and fair lending laws administered by the Board, and if so what standards should apply.

Under section 104(d) of the E-Sign Act, the Board is authorized to exempt specific disclosures from the consumer consent requirements of section 101(c) of the E-Sign Act, if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. The Board requests comment on whether it should consider exercising this exemption authority.

Study on Adapting Requirements to Online Banking and Lending

The E-Sign Act eliminated legal impediments to the use of electronic records and signatures. The Board requests comment on whether other legislative or regulatory changes are needed to adapt current requirements to online banking and lending and facilitate electronic delivery of consumer financial services.

As an example, under Regulations Z and DD, periodic statements inform consumers about their account activity over a period of time, typically monthly. The beginning and ending dates of the cycle determine costs and other information that must be disclosed. In addition, transmittal of the periodic statement triggers important consumer protections such as billing error resolution procedures. Online banking, however, can provide consumers with up-to-date information about their accounts on a continuing basis. Such information is a helpful supplement to—but does not comply as a substitute for—periodic statements. Should the rules for periodic statements be modified for online banking, and if so, how could the rules be crafted to maintain for consumers (1) a perspective of the cost and activity of an account over time, and (2) protections for resolving errors or liability for unauthorized transactions.

The comments may assist the Board in future efforts to update the regulations. The comments may also be used in connection with a study required under the Gramm-Leach-Bliley Act of 1999. That act requires the federal bank supervisory agencies to conduct a study of banking regulations that affect the electronic delivery of financial services and to submit to the Congress a report recommending any legislative changes that are needed to facilitate online banking and lending.

IV. Section-by-Section Analysis

Pursuant to its authority under section 105 of TILA, the Board amends Regulation Z to establish uniform standards for the use of electronic communication to provide disclosures required by this regulation. Electronic disclosures can effectively reduce compliance costs without adversely affecting consumer protections. The purpose of Regulation Z disclosures is to ensure that consumers have meaningful information about credit terms and to promote comparison shopping. The use of electronic communication may allow creditors to provide Regulation Z disclosures to the consumer earlier in the lending process. To the extent that a creditor may make electronic disclosures available at its Internet web site instead of providing the disclosures directly to the consumer, the Board finds that such an exception is warranted, acting pursuant to its authority under section 105(a) of TILA. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to changes in the official staff commentary.

Subpart B—Open-end Credit

Section 226.5 General Disclosure Requirements

5(a) Form of Disclosures

Section 226.5(a)(5) is added to provide a cross reference to rules governing the electronic delivery of disclosures in § 226.36.

5(b) Time of Disclosures

5(b)(2) Periodic Statements

Comment 5(b)(2)(ii)–3 is revised. Under the current rules for open-end plans, creditors may permit, but may not require, consumers to pick up their periodic statements in lieu of receiving them automatically. In 1997, the staff commentary was revised to clarify that consumers who elect to pick up written periodic statements might, instead, receive copies of such statements by electronic means (62 FR 10193, March 6, 1997). Consumers making that election, however, would not waive their right to also obtain written periodic statements. Accordingly, the comment did not specify the manner or form of consumers' consent to electronic copies of their statement.

As discussed below, § 226.36(b) as adopted sets forth the general rule that a creditor subject to Regulation Z may provide disclosures electronically only if the creditor complies with section 101(c) of the E-Sign Act. This requirement applies to electronic statements provided in accordance with comment 5(b)(2)(ii)–3, and the comment has been revised accordingly.

Section 226.5a Credit and Charge Card Applications and Solicitations

Regulation Z requires credit and charge card issuers to provide cost disclosures in certain applications and solicitations to open card accounts.

5a(a) General Rules

5a(a)(2) Form of Disclosures

Regarding the timing of the § 226.5a disclosures, the 1999 proposal stated that for electronic card applications or solicitations, the disclosures must appear on the screen before the

application or solicitation appears. Under the final rule, a consumer must be able in all cases to access the disclosures at the time the blank application or reply form is made available by electronic communication, such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures. As adopted, comment 5a(a)(2)–8 has been modified from the 1999 proposal to provide additional guidance. Similar guidance is provided for home-equity lines of credit and adjustable rate mortgage (ARM) loans.

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Section 226.5a(b)(1)(ii) is revised and (iii) is added to address the accuracy of the APR in connection with electronic credit and charge card applications and solicitations. Where terms are disclosed in card applications and solicitations, card issuers are required to disclose the periodic rate that would apply, expressed as an APR. For fixed rates, card issuers are required to disclose the APR currently available under the plan. For variable rates, the APR disclosed in a direct mail solicitation must be accurate within 60 days before mailing; in a take-one, within 30 days before printing.

As part of the 1999 proposals, the Board proposed a single standard for APR accuracy in electronic disclosures: for a variable-rate plan, the disclosed APR would be deemed accurate if it is one that was in effect within 30 days before the disclosures are sent to the consumer's e-mail address. If disclosures are made available at another location such as the card issuer's Internet web site, the APR would be one in effect within the last 30 days. Commenters generally supported applying a uniform standard to both the e-mail and web site posting methods of providing applications or solicitations. The final rule is adopted as proposed.

5a(c) Direct-mail and Electronic Applications and Solicitations

The format and content requirements differ for cost disclosures in card applications or solicitations sent in direct mail campaigns and for those made available to the general public such as in ''take-one'' applications and catalogs or magazines. Disclosures accompanying direct mail applications and solicitations must be presented in a table. Disclosures in a take-one also may be presented in a table with the same content as for direct mail, but the act and regulation permit two alternatives for format and content: (1) A narrative that describes how finance charges and other charges are assessed, and (2) a statement that costs are involved, along with a toll-free telephone number to call for further information.

With regard to the format and content of disclosures, the Board's 1999 proposals generally applied the same rules to card applications and solicitations made in the electronic context as apply to paper-based applications and solicitations. Card issuers sending applications or solicitations to a consumer's e-mail address would follow the direct mail rules; applications or solicitations made available to the general public would follow the take-one rules. Commenters generally supported the proposal.

The Board believes that in the context of on-line credit shopping, consumers would benefit from consistent disclosures among credit card issuers, whether consumers view an application or solicitation from an e-mail address or at another location such as a card issuer's web site. The option to distribute paper-based take-ones without cost information addresses, in part, a concern that the disclosures may become inaccurate with no practical means to recall the take-ones. This concern is not an issue for disclosures posted on an Internet web site. Requiring all card issuers to post a table on web sites that have credit and charge card applications or solicitation would not be unduly burdensome. Pursuant to the Board's general authority under section 105(a) to create exceptions to carry out the purposes of the act and the Board's specific authority under section 127(c)(5) to modify disclosures to carry out the purposes of the rules affecting applications and solicitations, § 226.5a(c) is revised to apply the direct mail rules to electronic credit and charge card applications or solicitations.

Section 226.5b Requirements for Home-Equity Plans

5b(b) Time of Disclosures

Comment 5b(b)–7 is added to provide guidance on the timing of disclosures for electronic applications for a home-equity line of credit (HELOC). Regulation Z requires that disclosures (including a brochure) be provided at the time an application for a HELOC is provided to a consumer. The disclosures generically describe the creditor's HELOC product. In the September 1999 proposal, comment 5b(b)–7 stated that if a HELOC application is made available electronically, such as on a creditor's Internet web site, the disclosures must appear before the application is provided.

The final comment has been modified to provide guidance similar to that given for credit and charge card applications and solicitations under § 226.5a and ARM loans under § 226.19(b). In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application or reply form is made available by electronic communication, such as on a creditor's Internet web site.

5b(c) Duties of Third Parties

Under § 226.5b(c), persons other than the creditor that provide applications for a HELOC must give the consumer a brochure at the time the application is given, and in some cases also provide other disclosures. Section 226.5b(c)(2) is added to clarify that such persons who are required to comply with Regulation Z may use electronic communication to do so, as long as the requirements of § 226.36(b) are satisfied.

Section 226.15 Right of Rescission

15(b)(1) Notice of Right to Rescind

Section 226.15 provides that in certain open-end plans secured by a consumer's principal dwelling, the consumer has three business days to rescind the transaction after becoming obligated on the debt. Consumers with an ownership interest in the dwelling used as security must receive (1) cost disclosures about the transaction, and (2) two copies of a notice that explains consumers' rescission rights and how to effect rescission, including a form the consumer may use to notify the creditor if the consumer decides to rescind the transaction.

Section 226.15(b)(1) is revised to permit a creditor to provide a single rescission notice by electronic communication to each consumer with an ownership interest in the dwelling who has affirmatively consented to

electronic delivery of the notice. Comment 15(b)–1 is revised to provide guidance on electronic rescission notices. Similar guidance is provided under § 226.23 regarding rescission notices for closed-end transactions.

Section 226.16 Advertising

16(c) Catalogs or Other Multiple-page Advertisements; Electronic Advertisements

Stating certain credit terms in an advertisement for an open-end credit plan triggers the disclosure of additional terms. Section 226.16(c) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering credit terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Of the few comments received on this provision, commenters supported expanding the use of a table or schedule to electronic advertisements. Section 226.16(c) is revised to cover electronic advertisements as proposed and a conforming amendment in the staff commentary is made to comment 16(c)(1)–1. Comment 16(c)(1)–2 is added as proposed to provide guidance in complying with the requirements of this section for creditors using electronic communication.

Subpart C—Closed-end Credit

Section 226.17 General Disclosure Requirements

17(a) Form of Disclosures

Section 226.17(a)(3) is added to provide a cross reference to rules governing the electronic delivery of disclosures in § 226.36.

17(g) Mail or Telephone Orders—Delay in Disclosures

Section 226.17(g) allows creditors to defer TILA disclosures when a consumer makes a credit purchase or requests credit by mail, telephone, or any other written or ''electronic communication'' without face-to-face or direct solicitation by the creditor. The deferral rule pre-dates online or Internet banking; the term ''electronic communication'' included credit requests by telegraph transmissions and facsimiles. The rationale underlying the deferral is that creditors cannot provide transaction-specific disclosures in written form as required by the regulation at the time of the consumer's purchase or request. In such cases, creditors may delay providing disclosures until the first payment due date, provided certain information has been ''made available in written form'' before the consumer's request.

The interim final rule provides as did the 1999 proposal that creditors offering loan products by electronic communication (for example, those offered on the Internet) may not delay providing disclosures under § 226.17(g). The difficulties in providing disclosures for credit requests by mail or telephone are not present for credit requests received by e-mail or through the Internet. Thus, specific disclosures must be provided before transactions are consummated using electronic communication as defined in § 226.36. The language has been revised from the proposal to clarify that the deferral rule in § 226.17(g) remains available to creditors offering loan products by facsimile machine (as well as mail and telephone) without face-to-face or direct telephone solicitation.

Section 226.19 Certain Residential Mortgage and Variable-rate Transactions

19(b) Certain Variable-rate Transactions

For certain loans with variable-rate features (loans where the APR may increase during the loan term) that are secured by the consumer's principal dwelling, creditors must provide consumers with a booklet and other disclosures generically describing the creditor's product when an application is given (or a nonrefundable fee is paid, whichever occurs earlier). In the September 1999 proposal, comment 19(b)–2 was revised to address the timing for providing disclosures required by § 226.19(b) when electronic communication is used. The final rule has been modified consistent with the rules for providing disclosures with applications and solicitations for credit and charge cards under § 226.5a and applications for home-equity lines of credit under § 226.5b. In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application is made available by electronic communication, such as on a creditor's Internet web site.

Section 226.23 Right of Rescission

23(b)(1) Notice of Right to Rescind

Section 226.23 provides that in certain transactions secured by a consumer's principal dwelling, the consumer has three business days to rescind the transaction after becoming obligated on the debt. Consumers with an ownership interest in the dwelling used as security must receive (1) cost disclosures about the transaction, and (2) two copies of a notice that explains consumers' rescission rights and how to effect rescission, including a form the consumer may use to notify the creditor if the consumer decides to rescind the transaction. Consistent with amendments to § 226.15(b)(1) regarding rescission notices provided electronically for open-end credit plans, § 226.23(b)(1) is amended to permit a creditor delivering rescission notices electronically to send a single notice to each consumer with an ownership interest in the dwelling used as security (rather than two notices). Comment 23(b)–1 is added to provide guidance on electronic rescission notices.

Section 226.24 Advertising

Regulation Z prescribes certain disclosures for closed-end loan advertisements. Although the specific requirements differ somewhat for closed-end loans and open-end credit plans, the revisions adopted by the Board for closed-end loan advertisements are substantially similar to those discussed above for open-end credit plans.

24(b) Advertisement of Rate of Finance Charge

Section 226.24(b) permits creditors to state a simple annual rate of interest or periodic rate in addition to the APR, as long as the rate is stated in conjunction with, but not more conspicuously than, the APR. Comment 24(b)–6 contains guidance on how this rule applies to an electronic advertisement.

24(d) Catalogs and Other Multiple-page Advertisements; Electronic Advertisements

Stating certain credit terms in an advertisement for closed-end credit triggers the disclosure of additional terms. Section 226.24(d) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering credit terms appearing elsewhere in the advertisement refer to the page where the table or schedule is printed. Section 226.24(d) is revised to cover electronic advertisements, as proposed, and a conforming amendment is made to comment 24(d)–2. Comment 24(d)–4 is added as proposed to provide guidance in complying with the requirements of this section for creditors using electronic communication.

Subpart D—Miscellaneous

Section 226.27 Language of Disclosures

To provide consistency among the regulations, § 226.27 is revised as proposed to permit creditors to provide disclosures in languages other than

English as long as disclosures in English are available to consumers who request them.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31 General Rules

31(b) Form of Disclosures

Section 226.31(b) is revised to provide a cross reference to rules governing the electronic delivery of disclosures in § 226.36.

Subpart F—Electronic Communication

Section 226.36 Requirements for Electronic Communication

36(a) Definition

As adopted, the definition of the term ''electronic communication'' remains substantially unchanged from the 1999 proposals. Section 226.36(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text; an example is a message displayed on a personal computer monitor screen. Thus, audio- and voice-response telephone systems are not included. Because the rule permits the use of electronic communication to satisfy the statutory requirement for written disclosures that must be clear and conspicuous, the Board believes visual text is an essential element of the definition. Creditors that accommodate vision-impaired consumers by providing disclosures that do not use visual text must also provide disclosures using visual text.

Some commenters asked for clarification that the definition was not intended to preclude the use of devices other than personal computers, which also can display visual text. The equipment on which the text message is received is not limited to a personal computer, provided the visual display used to deliver the disclosures meets the ''clear and conspicuous'' format requirement, discussed below.

36(b) General Rule

Effective October 1, 2000, the E-Sign Act permits creditors to provide disclosures using electronic communication, if the creditor complies with the consumer consent requirements in Section 101(c). Under section 101(c) of the E-Sign Act, creditors must provide specific information about the electronic delivery of disclosures before obtaining the consumer's affirmative consent to receive electronic disclosures. The consent requirements in the E-Sign Act are similar but not identical to the Board's 1999 proposal. Accordingly, § 226.36(b) sets forth the general rule that creditors subject to Regulation Z may provide disclosures electronically if the creditor complies with section 101(c) of the E-Sign Act.

The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under TILA other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing and retainability rules and the clear and conspicuous standard. Comment 36(b)–1 contains this guidance.

Presenting Disclosures in a Clear and Conspicuous Format

Electronic disclosures must be clear and conspicuous, as is the case for all written disclosures under TILA and Regulation Z. See §§ 226.5(a)(1), 226.17(a)(1), and 226.31(b). A creditor must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act: (1) The creditor must disclose the requirements for accessing and retaining disclosures in that format; (2) the consumer must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and (3) the creditor must provide the disclosures in accordance with the specified requirements. Comment 36(b)–2 contains this guidance.

Commenters posed a few questions about the applicability of the clear and conspicuous standard to particular situations. Some asked whether electronic advertisements or other unrelated promotional information may appear on the same screen as mandatory disclosures that are posted on an Internet web site. Except to the extent required by the regulation, disclosures do not have to be provided separately from other information. Advertisements should not be integrated into the text of the disclosure in a manner that violates the clear and conspicuous standard.

Commenters also had questions about the use of navigational tools with electronic disclosures. For example, some believed that such tools might be helpful in directing consumers to related information that explains the terminology used in the disclosures. Many Internet web sites use navigational tools that are conspicuous through the use of bold text, larger fonts, different colors, underlining, or other methods of highlighting. Such tools are not per se prohibited so long as they are not used in a manner that would violate the clear and conspicuous standard.

Providing Timely Disclosures

Disclosures delivered electronically must comply with existing timing requirements under TILA and Regulation Z. See, for example, §§ 226.5(b), 226.17(b), and 226.31(c). Commenters on the Board's 1999 proposals requested specific guidance that an electronic disclosure would be considered timely based on the time it is sent by e-mail or posted on an Internet web site, regardless of when the consumer receives or reads the disclosure.

Under the final rule, consistent with rules for disclosures that are sent by postal mail, disclosures provided by e-mail are timely when they are sent by the required time. Disclosures posted periodically at an Internet web site are timely if, by the required time, the creditor both makes the disclosures available at that location and, in accordance with § 226.36(d)(2), sends a notice alerting the consumer that the disclosures have been posted. For example, under § 226.9, creditors offering open-end plans must provide a change-in-terms notice to consumers at least 15 days in advance of certain changes. For a change-in-terms notice posted on the Internet, a creditor must both post the notice and notify consumers of its availability at least 15 days in advance of the change. Comment 36(b)–4 contains this guidance.

Certain disclosures must be provided before the consumer becomes obligated. For example, when a creditor permits the consumer to consummate a closed-end transaction on-line, the consumer must be required to access the disclosures required under § 226.18 before becoming obligated. A link to the disclosures satisfies the timing rule if the consumer cannot bypass the disclosures before becoming obligated. Or, the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. Comment 36(b)–3 contains this guidance, as proposed, but has been expanded to provide the following additional guidance.

For disclosures that are not required to be segregated and thus may be interspersed into the text of another document, the creditor may satisfy the requirement to provide the disclosures if the document appears automatically or via a nonbypassable link. For example, when a creditor permits the consumer to open a credit card account and make a purchase immediately thereafter, disclosures required under § 226.6 must be provided before the first

transaction. The consumer must be required to access the disclosures (or the document containing the disclosures such as a credit card agreement) before becoming obligated for the plan (or before the first transaction).

Some industry commenters believed that requiring disclosures to automatically appear or be accessed by the consumer is cumbersome and unnecessary. Some commenters suggested that the Board allow the required disclosures to be accessible via a clearly marked navigational tool; they believe that once the tool is provided, the disclosure should be deemed to have been provided to the consumer.

TILA and Regulation Z require that creditors provide or send disclosures to consumers. It is not sufficient for creditors to provide a bypassable navigational tool that merely gives consumers the option of receiving the disclosures. Such an approach reduces the likelihood that consumers will notice and receive the disclosures. The final rule ensures that consumers actually see cost disclosures provided electronically so that they have the opportunity to read them when shopping for credit or before becoming obligated for an extension of credit, as applicable.

Commenters on the various proposals requested guidance regarding the creditor's duty in cases where a creditor cannot provide timely disclosures because an automated loan machine or other automated equipment controlled by the creditor malfunctions or otherwise fails to operate properly. Where the creditor controls the equipment and disclosures are required at that time, a creditor might not be liable for failing to provide timely disclosures if the defense in section 130(c) of TILA is available.

Providing Disclosures in a Form the Consumer May Keep

Under TILA and Regulation Z, many of the disclosures required to be in writing must be in a form the consumer can retain. Electronic disclosures are subject to this requirement. Comment 36(b)–5 contains guidance on this requirement.

Consumers may communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TILA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to access and retain the disclosures, the creditor also must send them to the consumer's designated e-mail address or make them available at another location, for example, on the creditor's Internet web site, where the information may be retrieved at a later date.

Where the creditor controls the equipment providing the electronic disclosures (for example, an automated loan machine or computer terminal located in the creditor's lobby), the creditor must ensure that the consumer has the opportunity to retain the required information. Comment 36(b)–6 contains guidance on this requirement.

36(c) When Consent is Required

Under the E-Sign Act, consumers must affirmatively consent before they receive electronic disclosures ''relating to a transaction'' if the disclosures are required by law or regulation to be in writing. Section 226.36(c) is added to provide that certain disclosures are not deemed to be related to a transaction for purposes of the E-Sign Act's consumer consent provision. These include disclosures in connection with advertisements (§ 226.16 and § 226.24), credit and charge card applications and solicitations (§ 226.5a), HELOC and ARM loan applications (§ 226.5b and § 226.19(b)), and disclosures under § 226.17(g)(1)–(5). In some circumstances, disclosures are available to the general public, such as advertisements and solicitations; in other circumstances, consumers receiving disclosures with a solicitation for credit may not enter in the credit transaction. Those entering into credit transactions will ultimately receive disclosures subject to the consent requirements.

36(d) Address or Location to Receive Electronic Communication

Consistent with the 1999 proposals, the interim rule provides that creditors may deliver electronic disclosures by sending them to a consumer's e-mail address. Alternatively, the rule provides that creditors may make the disclosures available at another location such as an Internet web site. If the creditor makes a disclosure available at such a location, the creditor effectively delivers the disclosure by sending a notice alerting the consumer when the disclosure can be accessed and preserving the disclosure at the location for at least 90 days. The time period for keeping disclosures available at a location such as a creditor's Internet web site under the interim rule differs from the 1999 proposals, based on commenters' concerns as discussed below.

36(d)(1)

For purposes of § 226.36(d), a consumer's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the creditor, as proposed. This guidance is contained in comment 36(d)(1)–1.

An electronic address would not include systems that permit communication only between the consumer and the creditor, for example, home-banking programs that allow consumers to communicate directly with a creditor on-line with the use of a computer and modem. These systems, like a creditor's web site accessed via the Internet, give consumers access to information about their accounts at a location controlled by the creditor. In both cases, the creditor determines how long account information will be available to the consumer. Consumers who receive disclosures at their e-mail address, however, may choose when to review, and for how long to retain, account information. Consumers who receive disclosures by contacting a creditor's site need to be alerted when the information is first available in order to ensure that they have the opportunity to access the information before it is removed. Thus, disclosures provided using systems such as home-banking programs are treated in the same manner as disclosures made available at an Internet web site, and a notice alerting the consumer when disclosures are posted must be sent, by e-mail or to a postal address, at the creditor's option.

36(d)(2)

Under § 226.36(d)(2)(i) of the interim rule, for disclosures made available at an Internet web site, a notice alerting the consumer when disclosures are posted must be sent by e-mail (or to a postal address, at the creditor's option). Section 226.36(d)(2)(i) requires that the alert notice identify the account involved and the address or other location where the disclosure is available. Comment 36(d)(2)–1 provides guidance on the level of detail required in identifying the account.

As proposed, under § 226.36(d)(2)(ii) of the interim rule, disclosures provided at an Internet web site must remain available for at least 90 days. The requirement seeks to ensure that consumers have adequate time to access and retain a disclosure under a variety of circumstances, such as when a consumer may not be able for an extended period of time to access the information due to computer malfunctions, travel, or illness. Making the periodic statement for 90 days also

ensures that it will be available for a sufficient time in most cases to allow alleged errors to be resolved under the procedures in Regulation Z. The 90-day period is uniform for all disclosures, for ease of compliance. Comment 36(d)(2)–2 is added to provide that during this period, the actual disclosures must be available to the consumer, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

Some industry commenters believed the 90-day time period is reasonable and feasible. About an equal number of commenters believed it was too burdensome and costly; some of these commenters suggested periods that ranged from 30 to 60 days.

The 1999 proposals provided that after the 90-day time period, disclosures would be available upon consumers' request, generally for 24 months, in the same format as initially provided to the consumer. The 24-month period is consistent with a creditor's duty to retain records that evidence compliance. Consumer advocates supported the proposed retention period; some recommended that disclosures should be available upon request for the length of the contractual relationship with the consumer.

Industry commenters strongly opposed the 24-month period. Many believed that keeping copies of electronic disclosures actually provided to consumers for that period of time would be costly and burdensome. Moreover, industry commenters believed that once a consumer has accessed the disclosures, the consumer rather than the creditor should have the duty to retain them for future reference. They also noted that under existing record retention requirements applicable to paper disclosures, a creditor need only demonstrate compliance with the rules, but need not retain copies of the actual disclosures provided to consumers.

The requirement for creditors to provide duplicate disclosures upon request for 24 months has not been adopted. A creditor's duty to retain evidence of compliance for 24 months remains unchanged.

36(d)(3) Exceptions

Section 226.36(d)(3) is added to make clear that the requirements of paragraphs (i) and (ii) of § 226.36(d)(2) do not apply to disclosures in credit and charge card applications and solicitations mailed or otherwise distributed to the general public (§ 226.5a), certain credit advertisements (§§ 226.16 and .24), cost information for representative transactions made available to consumers or to the public (§ 226.17(g)), or disclosures for certain home-secured credit (§§ 226.5b and 19(b)).

36(e) Redelivery

Industry commenters on the 1998 proposal asked for clarification that sending the electronic disclosures complies with the regulation, and that institutions are not required to confirm that the consumer actually received them. Consumer advocates asked that institutions be required to verify the delivery of disclosures by return receipt, in the case of e-mail. In the 1999 proposals, the Board solicited comment on the need for and the feasibility of such a requirement.

Consumer advocates believe that e-mail systems are not yet sufficiently reliable, and that safeguards are necessary to ensure that consumers actually receive disclosures. Industry commenters stated that a return receipt requirement would be costly and burdensome, and would require creditors to monitor return receipts in every case to determine that individual consumers received the disclosures.

Section 101(c) of the E-Sign Act requires that consumers consent electronically, or confirm their consents electronically, in a manner that reasonably demonstrates that the consumer can access the information that the creditor will be providing. This requirement seeks to verify at the outset that the consumer is actually capable of receiving the information in the electronic format being used by the creditor. After the consumer consents, the E-Sign Act also requires creditors to notify consumers of changes that materially affect consumers' ability to access electronic disclosures.

The interim rule does not impose a verification requirement because the cost and burden associated with verifying delivery of all disclosures would not be warranted. When electronic disclosures are returned undelivered, however, § 226.36(e) imposes a duty to attempt redelivery (either electronically or to a postal address) based on address information in the institution's own files. Unlike paper disclosures delivered by the postal service, there generally is no commonly-accepted mechanism for reporting a change in electronic address or for forwarding e-mail. Where a creditor actually knows that the delivery of an electronic disclosure did not take place, the creditor should take reasonable steps to effectuate delivery in some way. For example, if an e-mail message to the consumer (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file. Sending the disclosures a second time to the same electronic address would not be sufficient if the institution has a different address for the consumer on file. Comment 36(e)–1 provides this guidance.

This redelivery requirement is limited to situations where the electronic communication cannot be delivered and does not apply to situations where the disclosure is delivered but, for example, cannot be read by the consumer due to technical problems with the consumer's software. A creditor's duty to redeliver a disclosure under § 226.36(e) does not affect the timeliness of the disclosure. Creditors comply with the timing requirements of the regulation when a disclosure is initially sent in a timely manner, even though the disclosure is returned undelivered and the creditor is required under § 226.36(e) to take reasonable steps to attempt redelivery.

36(f) Electronic Signatures

The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the act defines an electronic signature. Section 226.36(f) is added to incorporate the E-Sign Act's definition of electronic signature into the regulation. To comply with the E-Sign Act, an electronic signature must be executed or adopted by a consumer with the intent to sign the record. Accordingly, regardless of the technology used to meet this requirement, the process must evidence the consumer's identity. Comment 36(f)–1 provides this guidance.

Additional Issues

Document Integrity

The interim rule does not impose document integrity standards. Consumer advocates and others expressed concerns that electronic documents can be altered more easily than paper documents. They say that consumers' ability to enforce rights under the consumer protection laws could be impaired, in some cases, if the authenticity of disclosures they retain cannot be demonstrated.

Institutions are generally required to retain evidence of compliance with the Board's consumer regulations. Accordingly, the Board requested comment on the feasibility of requiring institutions to have systems in place capable of detecting whether or not information has been altered, or to use

independent certification authorities to verify disclosure documents.

Consumer advocates strongly supported document integrity requirements (including the use of certification authorities) that would apply to all-electronic disclosures. Signatures, notary seals, and verification procedures such as recordation are used to protect against alterations for transactions memorialized in paper form. Consumer advocates believe that comparable verification procedures are needed for electronic disclosures as well.

Industry commenters opposed mandatory document integrity standards for electronic disclosures. Because the technology in this area is still evolving, they believe that mandatory standards would be premature. Others believe that imposing document integrity standards or requiring the use of certification authorities would be costly to implement.

The Board recognizes the concerns about document integrity, but believes it is not practicable at this time to impose document integrity standards for consumer disclosures or mandate the use of independent certification authorities. Effective methods may be too costly. Other less costly methods may deter alterations in some cases, but would not necessarily ensure document integrity.

Moreover, the issue of document integrity affects electronic commerce generally and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Section 104(b)(3) of the E-Sign Act authorizes federal or state regulatory agencies to specify performance standards to assure the accuracy, record integrity, and accessibility of records that are required to be retained, but prohibits the agencies from requiring the use of a particular type of software or hardware in order to comply with record retention requirements. Technology is likely to develop to protect electronic contracts and other legal documents. Thus, it seems premature for the Board to specify any particular standards or methods for consumer disclosure at this time.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1043, and, when possible, should use a standard typeface with a font size of 10 or 12. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Regulatory Flexibility Analysis

The Board has reviewed these interim amendments to Regulation Z, in accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604). Two of the three requirements of a final regulatory flexibility analysis under the Act are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of those issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. This interim final rule is designed to provide creditors with an alternative method of providing disclosures; the rule will relieve compliance burden by giving creditors flexibility in providing disclosures required by the regulation. Overall, the costs of providing electronic disclosures are not expected to have significant impact on small entities. The expectation is that providing electronic disclosures may ultimately reduce the costs associated with providing disclosures.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR Part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of the Regulation Z and the Truth in Lending Act (TILA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The revisions provide that creditors may deliver disclosures electronically upon obtaining consumers' affirmative consent in accordance with the E-Sign Act. The revisions also provide guidance to institutions on the timing and delivery of electronic disclosures, to ensure that consumers have adequate opportunity to access and retain the information.

With respect to state member banks, it is estimated that there are 1000 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year. The current annual burden is estimated to be 1,886,392 hours. No comments specifically addressing the burden estimate were received, therefore, the numbers remain unchanged. There is estimated to be no additional cost burden and no capital or start up cost associated with the interim final rule.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VIII. Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the interim rule is clearly stated and effectively organized, and how the Board might make the rule easier to understand.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart B—Open-End Credit

2. Section 226.5 is amended by adding a new paragraph (a)(5) as follows:

§ 226.5 General disclosure requirements.

(a) *Form of disclosures.* * * *

(5) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 226.36.

* * * * *

3. Section 226.5a is amended by revising paragraph (b)(1)(ii), adding a new paragraph (b)(1)(iii), and revising paragraph (c) as follows:

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(b) *Required disclosures.* * * *

(1) *Annual percentage rate.* * * *

(ii) When variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures. Disclosures provided by electronic communication are subject to paragraph (b)(1)(iii) of this section.

(iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before mailing the disclosures to a consumer's electronic mail address. If disclosures are made available at another location such as the card issuer's Internet web site, the annual percentage rate must be one in effect within the last 30 days.

* * * * *

(c) *Direct-mail and electronic applications and solicitations.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided by electronic communication.

* * * * *

4. Section 226.5b is amended by redesignating paragraph (c) as paragraph (c)(1), adding a heading for paragraph (c)(1), and adding a new paragraph (c)(2) as follows:

§ 226.5b Requirements for home-equity plans.

* * * * *

(c) *Duties of third parties.* (1) *General.* * * *

(2) *Electronic communication.* Persons other than the creditor that are required to comply with paragraphs (d) and (e) of this section may use electronic communication in accordance with the requirements of § 226.36, as applicable.

* * * * *

5. Section 226.15 is amended by revising the first sentence of the introductory text of paragraph (b) as follows:

§ 226.15 Right of rescission.

* * * * *

(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in § 226.36(b)). * * *

* * * * *

6. Section 226.16 is amended by revising paragraph (c) as follows:

§ 226.16 Advertising.

* * * * *

(c) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an advertisement using electronic communication, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an advertisement using electronic communication complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

* * * * *

Subpart C—Closed-End Credit

7. Section 226.17 is amended by:

a. Adding a new paragraph (a)(3); and

b. Revising the introductory text in paragraph (g).

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* * * *

(3) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 226.36.

* * * * *

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

* * * * *

8. Section 226.23 is amended by revising the first sentence of paragraph (b)(1) as follows:

§ 226.23 Right of rescission.

* * * * *

(b)(1) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered by electronic communication as provided in § 226.36(b)). * * *

* * * * *

9. Section 226.24 is amended by revising paragraph (d) as follows:

§ 226.24 Advertising.

* * * * *

(d) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an advertisement using electronic communication, gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the

catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an advertisement using electronic communication complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart D—Miscellaneous

10. Section 226.27 is revised to read as follows:

§ 226.27 Language of disclosures.

Disclosures required by this regulation may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request. This requirement for providing English disclosures on request does not apply to advertisements subject to §§ 226.16 and 226.24.

Subpart E—Special Rules for Certain Home Mortgage Transactions

11. Section 226.31 is amended by revising paragraph (b) to read as follows:

§ 226.31 General rules.

* * * * *

(b) *Form of disclosures.* (1) *General.* The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep.

(2) *Electronic communication.* For rules governing the electronic delivery of disclosures, including a definition of electronic communication, see § 226.36.

* * * * *

§ 226.35 [Reserved]

12. Add and reserve a new § 226.35.

13. Add a new subpart F to part 226 to read as follows:

Subpart F—Electronic Communication

§ 226.36 Requirements for electronic communication.

(a) *Definition.* ''Electronic communication'' means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a creditor may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When consent is required.* Under the E-Sign Act, a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under §§ 226.5a, 226.5b(d) and 226.5b(e), 226.16, 226.17(g)(1) through (5), 226.19(b) and 226.24 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the consumer's electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and

(i) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(3) *Exceptions.* A creditor need not comply with paragraphs (d)(2)(i) and (ii) of this section for the disclosures required under §§ 226.5a, 226.5b(d) and 226.5b(e), 226.16, 226.17(g)(1) through (5), 226.19(b) and 226.24.

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.

(f) *Electronic signatures.* An electronic signature as defined under the E-Sign satisfies any requirement under this part for a consumer's signature or initials.

14. In Supplement I to Part 226, the following amendments are made:

a. In *Section 226.5—General Disclosure Requirements,* under *Paragraph 5(b)(2)(ii),* paragraph 3. is revised.

b. In *Section 226.5a—Credit and Charge Card Applications and Solicitations,* under *5a(a)(2) Form of Disclosures,* a new paragraph 8. is added.

c. In *Section 226.5b—Requirements for Home Equity Plans,* under *5b(b) Time of Disclosures,* a new paragraph 7. is added.

d. In *Section 226.15—Right of Rescission,* under *15(b) Notice of Right to Rescind.,* two new sentences are added at the end of paragraph 1.

e. In *Section 226.16—Advertising,* the heading *16(c) Catalogs and Multiple-page Advertisements* is revised and under *Paragraph 16(c)(1).,* paragraph 1. is revised and a new paragraph 2. is added.

f. In *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions,* under *19(b) Certain variable-rate transactions.,* paragraph 2. is revised.

g. In *Section 226.23—Right of Rescission,* under *23(b) Notice of Right to Rescind.,* two new sentences are added at the end of paragraph 1.

h. In *Section 226.24—Advertising,* under *24(b) Advertisement of rate of finance charge,* a new paragraph 6. is added.

i. In *Section 226.24—Advertising,* the heading *24(d) Catalogs and multiple-page advertisements* is revised and under *24(d),* paragraph 2. is revised and a new paragraph 4. is added.

j. A new Subpart F is added to Supplement I.

The amendments read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

Section 226.5—General Disclosure Requirements

* * * * *

(b)(2) Periodic Statements

* * * * *

Paragraph 5(b)(2)(ii)

* * * * *

3. *Calling for periodic statements.* When the consumer initiates a request, the creditor may permit, but may not require, consumers to pick up their periodic statements. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement must be made available in accordance with the 14-day rule. If the consumer wishes to receive the statement by electronic communication, the creditor must comply with the consumer consent requirements as provided in § 226.36(b).

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General Rules

5a(a)(2) Form of Disclosures

* * * * *

8. *Timing of disclosures for electronic applications or solicitations.* In all cases, a consumer must be able to access the disclosures at the time the blank application

or reply form is made available by electronic communication, such as on a card issuer's Internet web site. Card issuers have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, card issuers may provide a link to electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A card issuer need not confirm that the consumer has read the disclosures.

* * * * *

Section 226.5b—Requirements for Home-Equity Plans

* * * * *

5b(b) Time of Disclosures

* * * * *

7. *Applications available by electronic communication.* In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application or reply form is made available by electronic communication, such as on a creditor's Internet web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application or reply form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosures before submitting the application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.

* * * * *

Section 226.15—Right of Rescission

* * * * *

15(b) Notice of Right to Rescind

1. *Who receives notice.* * * * If e-mail is used, the creditor complies with § 226.15(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.

* * * * *

Section 226.16—Advertising

* * * * *

16(c) Catalogs or Other Multiple-page Advertisements; Electronic Advertisements

* * * * *

Paragraph 16(c)(1)

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement. The rule applies only if the advertisement contains one or more of the triggering terms from § 226.16(b).

2. *Electronic communication.* If an advertisement using electronic communication contains the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

* * * * *

Subpart C Closed—End Credit

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain Variable-rate Transactions

* * * * *

2. *Timing.* A creditor must give the disclosures required under this section at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

i. *Intermediary agent or broker.* In cases where a creditor receives a written application through an intermediary agent or broker, however, footnote 45b provides a substitute timing rule requiring the creditor to deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. (See comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) This three-day rule also applies where the creditor takes an application over the telephone.

ii. *Telephone request.* In cases where the consumer merely requests an application over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

iii. *Mail solicitations.* In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under this section if an application form is included with the solicitation.

iv. *Conversion.* In cases where an open-end credit account will convert to a closed-end transaction subject to this section under a written agreement with the consumer, disclosures under this section may be given at the time of conversion. (See the commentary to § 226.20(a) for information on the timing requirements for § 226.19(b)(2) disclosures when a variable-rate feature is later added to a transaction.)

v. *Electronic applications.* In all cases, a consumer must be able to access the disclosures (including the brochure) at the time the blank application form is made available by electronic communication, such as on a creditor's Internet web site. Creditors have flexibility in satisfying this requirement. For example, if a link is not used, the application form must clearly and conspicuously refer the consumer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Alternatively, creditors may provide a link to electronic disclosures as long as consumers cannot bypass the disclosure before submitting the application form. Or the disclosures could automatically appear on the screen when the application form appears. A creditor need not confirm that the consumer has read the disclosures or brochure.

* * * * *

Section 226.23—Right of Rescission

* * * * *

23(b) Notice of right to rescind

1. *Who receives notice.* * * * If e-mail is used, the creditor complies with § 226.23(b)(1) if one notice is sent to each co-owner. Each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.

* * * * *

Section 226.24—Advertising

* * * * *

24(b) Advertisement of Rate of Finance Charge

* * * * *

6. *Electronic communication.* A simple annual rate or periodic rate that is applied to an unpaid balance may be stated only if it is provided in conjunction with an annual percentage rate. In an advertisement using electronic communication, the consumer must be able to view both rates simultaneously. This requirement is not satisfied if the consumer can view annual percentage rate only by use of a link that takes the consumer to information appearing at another location.

* * * * *

24(d) Catalogs or Other Multiple-page Advertisements; Electronic Advertisements

* * * * *

2. *General.* Section 226.24(d) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement, or in an electronic advertisement. The rule applies only if the advertisement contains one or more of the triggering terms from § 226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under § 226.24(c)(2) and so is not covered by § 226.24(d).

* * * * *

4. *Electronic communication.* If an advertisement using electronic communication contains the table or schedule permitted under § 226.24(d)(1), any statement of terms set forth in § 226.24(c)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information (but see comment 24(b)–6).

* * * * *

Subpart F—Electronic Communication

Section 226.36—Requirements for Electronic Communication

36(b) General Rule

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a requirement that disclosures be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and conspicuous standard. For example, to satisfy the clear and conspicuous standard for disclosures, electronic disclosures must use visual text.

2. *Clear and conspicuous standard.* A creditor must provide electronic disclosures using a clear and conspicuous format. Also, in accordance with the E-Sign Act:

i. The creditor must disclose the requirements for accessing and retaining disclosures in that format;

ii. The consumer must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and

iii. The creditor must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery when a consumer becomes obligated on-line.*

i. When a creditor permits the consumer to consummate a closed-end transaction on-line, the consumer must be required to access the disclosures required under § 226.18 before becoming obligated. A link to the disclosures satisfies the timing rule if the consumer cannot bypass the disclosures before becoming obligated. Or the disclosures in this example must automatically appear on the screen, even if multiple screens are required to view the entire disclosure. The creditor is not required to confirm that the consumer has read the disclosures.

ii. For disclosures that are not required to be segregated and thus may be interspersed into the text of another document, the creditor may satisfy the requirement to provide the disclosures if the document appears automatically or via a nonbypassable link. For example, when a creditor permits the consumer to open a credit card account and make a purchase immediately thereafter, disclosures required under § 226.6 must be provided before the first transaction. The consumer must be required to access the disclosures (or the document containing the disclosures such as a credit card agreement) before becoming obligated for the plan (or before the first transaction). The creditor is not required to confirm that the consumer has read the disclosures.

4. *Timing and effective delivery for disclosures provided periodically.* Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet web site such as periodic statements, or change-in-terms and other notices, are timely when the creditor has both made the disclosures available and sent a notice alerting consumer that the disclosures have been posted. For example, under § 226.9, creditors offering open-end plans must provide a change-in-terms notice to consumers at least 15 days in advance of certain changes. For a change-in-terms notice posted on the Internet, a creditor must both post the notice and notify consumers of its availability at least 15 days in advance of the change.

5. *Retainability of disclosures.* Creditors satisfy the requirement that disclosures be in a form that the consumer may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

6. *Disclosures provided on creditor's equipment.* A creditor that controls the equipment providing electronic disclosures to consumers (for example, a computer terminal in a creditor's lobby or an automated loan machine at a public kiosk) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and conspicuous format and in a form that the consumer may keep. For example, if disclosures are required at the time of an on-line transaction, the disclosures must be sent to the consumer's e-mail address or must be made available at another location such as the creditor's Internet web site, unless the creditor provides a printer that automatically prints the disclosures.

36(d) Address or Location to Receive Electronic Communication

Paragraph 36(d)(1)

1. *Electronic address.* A consumer's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the creditor.

Paragraph 36(d)(2)

1. *Identifying account involved.* A creditor may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number. For example, where the consumer has only one credit card account, and no confusion would result, the card issuer may refer to ''your credit card account.'' If the consumer has two credit card accounts, the card issuer may, for example, differentiate accounts based on the card program or by using a truncated account number.

2. *90-day rule.* The actual disclosures provided to consumer must be available for at least 90 days, but the creditor has discretion to determine whether they should be available at the same location for the entire period.

36(e) Redelivery

1. *E-mail returned as undeliverable.* If an e-mail to the consumer (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the creditor sends the disclosure to a different e-mail address or postal address that the creditor has on file for the consumer. Sending the disclosures a second time to the same electronic address is not sufficient if the creditor has a different address for the consumer on file.

36(f) *Electronic Signatures*

1. *Relationship to E-Sign Act.* The E-Sign Act provides that electronic signatures have the same validity as handwritten signatures. Section 106 of the E-Sign Act (15 U.S.C. 7006) defines an electronic signature. To comply with the E-Sign Act, an electronic signature must be executed or adopted by a consumer with the intent to sign the record. Regardless of the technology used to meet this requirement, the process must evidence the consumer's identity.

By order of the Board of Governors of the Federal Reserve System, March 23, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–7727 Filed 3–29–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–29–AD; Amendment 39–12148; AD 2001–06–01]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes three existing airworthiness directives (AD's) that apply to certain The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31P, PA–31T, and PA–31T1 airplanes. These AD's currently require you to repetitively inspect and/or modify the elevator structure. This AD initially retains the inspection and modification requirements that are currently required; adds certain other airplane models to the AD applicability; and requires a modification at a certain time period, as terminating action for the currently required repetitive inspections. This action coincides with the Federal Aviation Administration's (FAA) policy of incorporating modifications, when available, that will terminate the need for repetitive inspections. The actions specified by this AD are intended to continue to detect and correct damage to the elevator structure. A damaged elevator structure could lead to reduced or loss of control of the airplane.

DATES: This AD becomes effective on May 8, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 8, 2001.

ADDRESSES: You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097; e-mail: *william.o.herderich@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

What prior AD action did FAA take on this subject? The following AD's currently require you to repetitively inspect and/or modify the elevator structure on certain Piper Models PA–31, PA–31–300, PA–31P, PA–31T, and PA–31T1 airplanes.

—AD 70–26–06, Amendment 39–1132, currently requires you to repetitively inspect the elevator structure on Piper Models PA–31 and PA–31–300 airplanes, serial numbers 31–2 through 31–694. The AD requires you to modify the elevator structure if cracks are found;

—AD 76–03–01, Amendment 39–2505, currently requires you to modify the elevator structure on Piper Models PA–31T airplanes, serial numbers 31T–7400002 through 31T–7620012. This AD requires you to inspect the elevator support and replace any defective parts on Piper Model PA–31T airplanes, serial numbers 31T–7400002 through 31T–760012; and

—AD 80–02–15, Amendment 39–3676, currently requires you to inspect and alter the elevator structure and replace any defective parts on Piper Model PA–31P airplanes, serial numbers 31P–1 through 31P–7730012; Model PA–31T airplanes, serial numbers 31T-7400002 through 31T–7920075; and Model PA–31T1 airplanes, serial numbers 31T–7804001 through 31T–7904036 and 31T–7904038 through 31T-7904044.

What has happened to necessitate further AD action? Piper has informed FAA of reports of damage in the elevator structure area on additional airplanes. These are Piper Models PA–31–325, PA–31–350, PA–31T3, and PA–31P–350 airplanes.

On December 24, 1996, FAA issued a special airworthiness information bulletin (SAIB) to encourage compliance with new service information related to the elevator structure on the above-referenced airplanes. We continue to receive reports of damage in the elevator structure area on these airplanes.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 21, 2000 (65 FR 45319). The NPRM proposed to supersede AD 70–26–06, AD 76–03–01, and AD 80–02–15. The NPRM also proposed to initially retain the inspection and modification requirements currently required in AD 70–26–06, AD 76–03–01, and AD 80–02–15, add certain other airplane models to the AD applicability; and require a modification at a certain time period, as terminating action for the currently required repetitive inspections.

Does this AD follow FAA's aging commuter-class aircraft policy? The actions required in this AD are consistent with FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on our determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, we consider (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to modifying the elevator structure on the affected airplanes will be to require you to repetitively inspect this area for the life of the airplane.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 2,344 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
20 workhours × $60 per hour = $1,200.	$600 per airplane	$1,200 + $600 = $1,800 per airplane.	$1,800 × 2,344 = $4,219,200.

We estimate the following costs to accomplish the initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
8 workhours × $60 per hour = $480.	No parts required for the inspection.	$480 per airplane	$480 × 2,344 = $1,125,120.

Note: Accomplishment of the modification will eliminate the need for the repetitive inspections.

Regulatory Impact

Does this AD impact various entities? 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.

Does this AD involve a significant rule or regulatory action? 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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 70–26–06, Amendment 39–1132; AD 76–03–01, Amendment 39–2505; and AD 80–02–15, Amendment 39–3676, and by adding a new AD to read as follows:

2001–06–01 The New Piper Aircraft, Inc.: Amendment 39–12148; Docket No. 99–CE–29–AD; Supersedes AD 70–26–06, Amendment 39–1132; AD 76–03–01, Amendment 39–2505; and AD 80–02–15, Amendment 39–3676.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category;

Note 1: Aircraft referred to as Model PA–31–310 are actually Model PA–31 airplanes. Actions specified for PA–31 airplanes must also be performed. See also AD 77–03–03, Piper Service Bulletin 529, and type certificate data sheet A20SO.

(1) Part I of this AD: Inspection, replacement, and installation as specified in Piper Service Bulletin No. 323, dated September 21, 1970:

Models	Serial Nos.
PA–31 and PA–31–300	31–2 through 31–694.

(2) Part II of this AD: Modification as specified in Piper Service Bulletin No. 897B, Date: July 15, 1997:

Models	Serial Nos.
PA–31P	31P–1 through 31P–7730012.
PA–31T	31T–7400002 through 31T–8120104.
PA–31T1	31T–7804001 through 31T–8304003, and 31T–1104004 through 31T–1104017.
PA–31T2	31T–8166001 through 31T–8166076, and 31T–1166001 through 31T–1166008.
PA–31T3	31T–8275001 through 31T–8475001 and 31T–5575001.

(3) Part III of this AD: Modification as specified in Piper Service Bulletin No. 1008, Date: September 30, 1997:

Models	Serial Nos.
PA–31, PA–31–300, and PA–31–325	31–2 through 31–8312019.
PA–31–350	31–5001 through 31–8452021 and 31–8253001 through 31–8553002.
PA–31P–350	31P–8414001 through 31P–8414050.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the elevator structure. A damaged elevator structure could lead to reduced or loss of control of the airplane.

(d) *What actions must be accomplished on airplane models and serial numbers listed in paragraph (a)(1) of this AD to address this problem?* To address this problem on the airplane models and serial numbers listed in paragraph (a)(1) of this AD, you must accomplish the following actions:

Action	Compliance time	Procedures	Other information
(1) Initially inspect the rudder and elevator spars and elevator butt ribs for cracks.	Within 100 hours time-in-service (TIS) after the last inspection required by AD 70–26–06, and thereafter at intervals not to exceed 100 hours TIS until Piper Elevator and Rudder Hinge Replacement Kit No. 760 465 is incorporated.	In accordance with the instructions in Piper Service Bulletin No. 323, dated September 21, 1970.	This inspection is retained from AD 70–26–06.
(2) If cracks are found in the rudder or elevator structure during any inspection required by this AD, replace the cracked part, and either continue to reinspect or incorprate Kit No. 760 465.	Prior to further flight after the inspection where the cracks were found.	Do the inspections in accordance with the instructions in Piper Service Bulletin No. 323, dated September 21, 1970; or do the kit incorporation in accordance with the instructions to Piper Elevator and Rudder Hinge Replacement Kit No. 760 465, Revised October 25, 1989.	Not Applicable.
(3) Incorporate Piper Elevator and Rudder Hinge Replacement Kit No. 760 465.	Upon accumulating 2,000 hours TIS on the airplane or within the next 100 hours TIS after May 8, 2001 (the effective date of this AD), whichever occurs later.	Do this kit incorporation in accordance with the instructions to Piper Elevator and Rudder Hinge Replacement Kit No. 760 465, Revised October 25, 1989.	Not Applicable.

(e) *What actions must be accomplished on airplane models and serial numbers listed in paragraph (a)(2) of this AD to address this problem?* To address this problem on the airplane models and serial numbers listed in paragraph (a)(2) of this AD, you must accomplish the following actions:

Action	Compliance time	Procedures	Other information
(1) Modify the elevator trim tab system and elevator control tube, through the incorporation of Piper Kit No. 760 989.	Upon accumulating 2,000 hours TIS or within 100 hours TIS after May 8, 2001 (the effective date of this AD) whichever occurs later.	In accordance with the instructions to Piper Elevator Trim Tab System Modification Kit No. 760 989, as referenced in Piper Service Bulletin No. 477A, dated November 3, 1975.	This modification is retained from AD 76–03–01, and applies to Piper Model PA–31T airplanes, serial numbers 31T–7400002 through 31T–7620012. Credit for having performed this portion of the AD may be taken if the airplane is in compliance with the actions of AD 76–03–01.
(2) Incorporate Elevator Butt Rib Refinement Kit, Piper Part Number 766–219.	Upon accumulating 2,000 hours TIS or within the next 100 hours TIS after May 8, 2001 (the effective date of this AD), whichever occurs later.	Do this kit incorporation in accordance with the instructions to Elevator Butt Rib Refinement Kit, Piper Part Number 766–219, as referenced in Piper Service Bulletin No. 897B, Date: July 15, 1997.	Refinement Kit, Piper Part Number 766–219, may have been incorporated as specified in Piper Service Bulletin 897A. If so, credit for having performed this portion of the AD may be taken.

(f) *What actions must be accomplished on airplanes listed in paragraph (a)(3) of this AD to address this problem?* To address this problem on the airplanes listed in paragraph (a)(3) of this AD, you must accomplish the following actions:

Action	Compliance time	Procedures	Other information
Incorporate Elevator Butt Rib Reinforcement Kit, Piper Part Number 766–642.	Upon accumulating 2,000 hours TIS or within the next 100 hours TIS after May 8, 2001 (the effective date of this AD), whichever occurs later.	In accordance with the instructions to Elevator Butt Rib Reinforcement Kit, Piper Part Number 766–642, as specified in Piper Service Bulletin No. 1008, Date: September 30, 1997.	If AD 99–12–05, Amendment 39–11189, applies to one of the above-referenced airplanes, then the actions of AD 99–12–05 must be accomplished prior to incorporating Elevator Butt Rib Reinforcement Kit, Piper Part Number 766–642. No credit towards this AD is given for accomplishing the actions of Piper SB 864.

(g) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(3) Alternative methods of compliance that were approved in accordance with any of the following airworthiness directives (all

superseded by this action) are not considered approved for this AD:

(i) AD 70–26–06, Amendment 39–1132;

(ii) AD 76–03–01, Amendment 39–2505; and

(iii) AD 80–02–15, Amendment 39–3676.

Note 2: 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* You can contact William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097; e-mail: william.o.herderich@faa.gov.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Piper Service Bulletin No. 323, dated September 21, 1970, Piper Elevator and Rudder Hinge Replacement Kit No. 760 465, Revised October 25, 1989; Piper Elevator Trim Tab System Modification Kit No. 760 989, as referenced in Piper Service Bulletin No. 477A, dated November 3, 1975; Elevator Butt Rib Refinement Kit, Piper Part Number 766-219, as referenced in Piper Service Bulletin No. 897B, date: July 15, 1997; Elevator Butt Rib Reinforcement Kit, Piper Part Number 766–642, as specified in Piper Service Bulletin No. 1008, Date: September 30, 1997. The Director of the Federal Register approved these service bulletins and kits for incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001.

(k) *Does this AD action affect any existing AD actions?* This amendment supersedes the following AD actions:

(1) AD 70–26–06, Amendment 39–1132;

(2) AD 76–03–01, Amendment 39–2505; and

(3) AD 80–02–15, Amendment 39–3676.

(l) *When does this amendment become effective?* This amendment becomes effective on May 8, 2001.

Issued in Kansas City, Missouri, on March 9, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–6517 Filed 3–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–14–AD; Amendment 39–12164; AD 2001–06–17]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R and 172S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Models 172R and 172S airplanes. This AD requires a one-time inspection for proper engine idle speed and fuel control mixture setting and adjustment, as necessary. This AD also requires incorporating engine operating procedures into the pilots operating handbook (POH) and FAA-approved airplane flight manual (AFM). This AD is the result of reports of rough engine operation because of an over-rich fuel mixture (improper fuel flow settings). The actions specified by this AD are intended to detect and correct such improper fuel flow settings, which could result in rough engine operation or engine stoppage. This over-rich fuel mixture also contributes to the engine not restarting during flight when using published in-flight restart procedures.

DATES: This AD becomes effective on April 20, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before May 18, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may examine information related to this AD at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pendleton, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received several reports of improper engine fuel flow settings on Cessna Models 172R and 172S airplanes. These improper settings could prevent the engine from operating at idle speed when the pilot reduces power (i.e., landing approach, power off stalls, etc.). An over-rich fuel mixture is a reason why the engine may not operate at idle speed. This over-rich fuel mixture also contributes to the engine not restarting during flight when using published in-flight restart procedures.

The current pilot operating handbook (POH) and FAA-approved airplane flight manual (AFM) procedures for the Cessna Models 172R and 172S airplanes do not address the pilot bringing the throttle back to the hard idle stop (throttle full aft). The POH/AFM also does not address emergency engine restart procedures to enable engine startup if a rich fuel mixture exists.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in rough engine operation or engine stoppage. The over-rich fuel mixture also contributes to the engine not restarting during flight when using published in-flight restart procedures.

FAA's Determination and an Explanation of the Provisions of this AD

What has FAA decided? The FAA has reviewed all available information and determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Models 172R and 172S airplanes of the same type design;

—These airplanes should be inspected for proper engine idle speed and fuel control mixture setting, the engine idle speed or fuel control mixture setting should be adjusted as necessary, and engine operating procedures should be incorporated into the POH/AFM; and

—AD action should be taken in order to correct this unsafe condition.

Is there service information that applies to this subject? Cessna has issued Service Bulletin SB01–11-02,

dated March 5, 2001. This service bulletin:

—Includes procedures for inspecting the engine idle speed; and

—Specifies pilot operating procedure changes.

What does this AD require? This AD requires a one-time inspection for proper engine idle speed and fuel control mixture setting and adjustment, as necessary. This AD also requires incorporating engine operating procedures into the POH/AFM.

Procedures for accomplishing the inspection are included in the AD. We are not utilizing the procedures included in Cessna Service Bulletin SB01–11–02, dated March 5, 2001.

Why is FAA not requiring the actions specified in the service bulletin? The inspection procedures in Cessna Service Bulletin SB01–11–02 agree with the service manual procedures. The procedures we are including in this AD agree with the Cessna factory production procedures. After examining these procedures, FAA has determined that:

—The procedures in the service bulletin and service manual procedures are too restrictive for a pilot to accomplish in the field without using specialized equipment (portable electric tachometer);

—The pilot should be able to accomplish the inspection for proper engine idle speed and fuel control mixture setting; and

—The inspection procedures in this AD allow the pilot to both easily accomplish the inspection and address the safety intent of this AD.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this could result in rough engine operation or engine stoppage, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, we invite your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD that FAA wants me to address? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

We are reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–14–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations 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, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2001–06–14 Cessna Aircraft Company: Amendment 39–12164; Docket No. 2001–CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD applies to Models 172R and 172S, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct an over-rich fuel mixture (improper fuel flow settings), which could result in rough engine operation or engine stoppage. This over-rich fuel mixture also contributes to the engine not restarting during flight when using published in-flight restart procedures.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Action	Compliance time	Special instructions
(1) Accomplish one of the following inspections for proper engine idle speed and fuel control mixture setting: (i) Pilot Procedure: Accomplish the inspection with the engine oil temperature between 120 and 150 degrees Fahrenheit (F). Assure that the engine idle setting is between 575 and 625 revolutions per minute (RPM) and the mixture setting will produce a minimum 10 RPM rise and a maximum 50 RPM rise with the throttle at the hard ground idle stop. Screw the vernier mixture out slowly counterclockwise to obtain the RPM rise. (ii) Mechanic Procedure: Accomplish the inspection with the engine oil temperature between 120 and 150 degrees F. Assure that the fuel mixture setting is between 575 and 625 RPM and the mixture setting will produce a minimum 10 RPM rise and a maximum 20 RPM rise with the throttle at the hard ground idle stop. Screw the vernier mixture out slowly counterclockwise. The reason the limits are different than the pilot procedure is that the mechanic needs to establish a more accurate RPM indicator than the airplanes engine RPM gage. You will most likely need to use an electric tachometer to verify speed changes.	Within the next 10 hours time-in-service (TIS) after April 20, 2001 (the effective date of this AD), unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the inspection specified in paragraph (d)(1)(i) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). You may need to accomplish seasonal adjustments of the engine idle speed setting. These seasonal adjustments should not be included in your already established 12-month scheduled adjustments.
(2) If, during any inspection required by this AD, proper engine idle speed and fuel control mixture setting cannot be met, accomplish the following: (i) Adjust the fuel servo. This adjustment or any replacement must be accomplished by an appropriately-rated repair station; and (ii) Repeat the inspection specified in paragraph (d)(1) of this AD.	Accomplish the adjustment (if required) prior to further flight after the inspection required by paragraph (d)(1) of this AD. Reinspect within 25 hours TIS after the fuel servo adjustment.	If you have to adjust the servo more than twice over a 12-month period, obtain the next course of action from the FAA at the address referenced in paragraph (f) of this AD. We recommend you use an electronic strobe to verify RPM settings when making any adjustment.
(3) Add the following information to the end of page 3–20, Section 3 Emergency Procedures of the Cessna 172R or 172S Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM): ''IDLE POWER ENGINE ROUGHNESS An excessively rich idle fuel flow may cause low speed engine roughness during flight. During most in-flight low engine speeds (power off stalls, approach to landing, etc.), the mixture control is normally in the full-rich position. However, to improve engine roughness (caused by an improperly adjusted fuel servo) during low engine speeds while in flight, you should rotate the vernier mixture control (leaning of fuel mixture). You may also have to lean the fuel mixture if this low engine speed results in power loss and you need to restart the engine during flight. In all cases, you should land the airplane at the nearest airport for repairs if low speed engine roughness requires you to adjust the fuel mixture control to improve engine operation''	Within the next 10 hours TIS after April 20, 2001 (the effective date of this AD), unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the POH as specified in paragraph (d)(3) of this AD. You may insert a copy of this AD into the appropriate sections of the POH to comply with this action. Make an entry into the aircraft records showing compliance with portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(4) Insert the following information into the applicable Cessna Pilot's Operating Handbook (POH) and FAA-Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM): ''NORMAL PROCEDURES (Before Takeoff) item 13. Throttle: 1. Vertify smooth engine operation at idle speed of 575 to 625 RPM. 2. 1000 RPM or LESS''	Within the next 10 hours TIS after April 20, 2001 (the effective date of this AD), unless already accomplished.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the POH as specified in paragraph (d)(4) of this AD. You may insert a copy of this AD into the appropriate sections of the POH to comply with this action. Make an entry into the aircraft records showing compliance with portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Paul Pendleton, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *When does this amendment become effective?* This amendment becomes effective on April 20, 2001.

Issued in Kansas City, Missouri, on March 23, 2001.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–7831 Filed 3–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–36–AD; Amendment 39–12165; AD 2001–06–18]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the ice protection systems and to add information regarding operation in icing conditions; installing an ice detector system; and revising the AFM to include procedures for testing system integrity. That AD also requires installing the ice detector system in accordance with revised procedures. That amendment was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This amendment corrects and clarifies certain AFM procedures, and provides for an alternative AFM revision. The actions specified by this AD are intended to ensure that the flightcrew is able to recognize the formation of significant ice accretion and take appropriate action; such formation of ice could result in reduced controllability of the airplane in normal icing conditions.

DATES: Effective April 16, 2001.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 5, 2001 (66 FR 8082, January 29, 2001).

Comments for inclusion in the Rules Docket must be received on or before April 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–36–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-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–36–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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On January 17, 2001, the FAA issued AD 2001–02–06, amendment 39–12090 (66 FR 8082, January 29, 2001), applicable to all EMBRAER Model EMB–120 series airplanes, to require revising the Airplane Flight Manual (AFM) to include requirements for activation of the ice protection systems and to add information regarding operation in icing conditions; installing an ice detector system; and revising the AFM to include procedures for testing system integrity. That AD also requires installing the ice detector system in accordance with revised procedures. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by that AD are intended to ensure that the flightcrew is able to recognize the formation of significant ice accretion and take appropriate action; such formation of ice could result in reduced controllability of the airplane in normal icing conditions.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–02–06, the FAA has noted that a typographical error appeared in paragraph (a)(2) of that AD, which specified certain AFM revisions. Paragraph (a)(2) of the AD should have read, ''AIRSPEED (Flaps and Gear Up) . . . . . 160 KIAS MINIMUM'' instead of ''. . . 60 KIAS MINIMUM.'' While the typographical error may be readily apparent to a pilot rated in the EMBRAER Model EMB–120 series airplane, there is no way to know what the correct figure should be. Therefore, in view of the effective date of AD 2001–02–06 (March 5, 2001), we consider it necessary to supersede the existing AD to correct and clarify that AFM revision.

In addition, the FAA has been advised that EMBRAER has issued Revision 50 of AFM–120–794, dated November 3, 1997, which contains revised

procedures for activation of the ice protection systems and adds information regarding operation in icing conditions; installing an ice detector system; and revises the AFM to include procedures for testing system integrity.

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, classified Revision 50 of the AFM as mandatory, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2001–02–06 to require revision of the Normal Procedures Section of the current AFM. The revision corrects and clarifies the Normal Procedures Section of the current AFM revision, which currently specifies that when atmospheric or ground icing conditions exist, ''AIRSPEED (Flaps and Gear Up) . . . 60 KIAS.'' The revision corrects the reference to 60 KIAS to read ''160 KIAS.''

This AD also provides an alternative method of compliance to revise the AFM required by paragraph (a) of this AD.

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 2001–NM–36–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 removing amendment 39–12090 (66 FR 8082, January 29, 2001), and by adding a new airworthiness directive (AD), amendment 39–12165, to read as follows:

2001–06–18 Empresa Brasileira de Aeronautica, S.A. (EMBRAER): Amendment 39–12165. Docket 2001–NM–36–AD. Supersedes AD 2001–02–06, Amendment 39–12090.

Applicability: All Model EMB–120 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 [otherwise] modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 ensure that the flightcrew is able to recognize the formation of significant ice

accretion, which could result in reduced controllability of the airplane in normal icing conditions, accomplish the following:

Restatement of the Requirements of AD 2001–02–06

(a) Within 30 days after January 23, 1998 (the effective date of AD 97–26–06, amendment 39–10249), accomplish paragraphs (a)(1) and (a)(2) of this AD.

AFM Revisions—Limitations Section

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''TURN ON ICE PROTECTION SYSTEM and IGNITION SWITCHES AS FOLLOWS:

• AOA, TAT, SLIP, ENGINE AIR INLET, and IGNITION SWITCHES:

—When atmospheric or ground icing conditions exist.

• PROPELLER:

—When atmospheric or ground icing conditions exist, OR
—At the first sign of ice formation anywhere on the aircraft.

• WING and TAIL LEADING EDGES, and WINDSHIELD:

—At the first sign of ice formation anywhere on the aircraft.

NOTE: On takeoff, delay activation of the wing and tail leading edge de-ice systems until reaching the final segment speed.

NOTE: Atmospheric icing conditions exist when:

—Indicated Outside Air Temperature (OAT) during ground operations or Total Air Temperature (TAT) in flight is 10 degrees C or below; and
—Visible moisture in any form is present (such as clouds, fog with visibility of one mile or less, rain, snow, sleet, or ice crystals).

NOTE: Ground icing conditions exist when:

—Indicated OAT during ground operations is 10 degrees C or below; and
—Surface snow, standing water, or slush is present on the ramps, taxiways, or runways.

NOTE: For Operation in Atmospheric Icing Conditions:

—Follow the procedures in the Normal Procedures Section under Operation in Icing Conditions.''

AFM Revisions—Normal Procedures Section

(2) Revise the Normal Procedures Section of the FAA-approved AFM to include the following additional and revised information regarding operation in 1 icing conditions. This may be accomplished by inserting a copy of this AD in the AFM.

''Under DAILY CHECKS of the Ice Protection System, add the following:

The following tests must be performed prior to the first flight of the day for which known or forecast icing conditions are anticipated.

Ice Detector System TEST Button (if installed) ..... PRESS Check normal test sequence.

Under APPROACH Checklist, add the following:

Minimum Airspeed ..... APPROPRIATE TO FLAP POSITION (See Table Below).

Gear/Flap	Minimum recommended airspeed
UP/0°	150 KIAS
UP/15°	130 KIAS

Under OPERATION IN ICING CONDITIONS for FLYING INTO ICING CONDITION, *replace* the current AFM section information for normal icing conditions with the following:

—During flight, monitoring for icing conditions should start whenever the indicated outside air temperature is near or below freezing or when operating into icing conditions, as specified in the Limitations Section of this manual.
—When operating in icing conditions, the front windshield corners (unheated areas), propeller spinners, and wing leading edges will provide good visual cues of ice accretion.
—For airplanes equipped with an ice detection system, icing conditions will also be indicated by the illumination of the ICE CONDITION light on the multiple alarm panel.
—When atmospheric or ground icing conditions exist, proceed as follows:

AOA, TAT, SLIP, and ENGINE AIR INLET ..... ON
IGNITION Switches ..... ON
AIRSPEED (Flaps and Gear UP) ..... 160 KIAS MINIMUM

—When atmospheric or ground icing conditions exist, OR
—At the first sign of ice formation anywhere on the aircraft, proceed as follows:

PROPELLER Deicing Switch ..... ON
Select NORM mode if indicated OAT is above—10°C (14°F) or COLD mode if indicated OAT is below—10°C (14°F)

—At the first sign of ice formation anywhere on the aircraft, proceed as follows:

WINDSHIELD ..... ON
WING and TAIL LEADING EDGE ..... ON
Visually evaluate the severity of the ice encounter and the rate of accretion and select light or heavy mode (1-minute or 3-minute cycle) based on this evaluation

NOTE: On takeoff, delay activation of the wing and tail leading edge de-ice systems until reaching the final segment speed.

NOTE: The minimum NH required for proper operation of the pneumatic deicing system is 80%. At lower NH values, the pneumatic deicing system may not totally inflate, and the associated failure lights on the overhead panel may illuminate. If this occurs, increase NH.

Holding configuration:
Landing Gear Lever ..... UP
Flap Selector Lever ..... UP
N_P ..... 85% MINIMUM
Increase N_P as required to eliminate propeller vibrations
Approach and Landing procedure:
Increase approach and landing speeds, according to the following flap settings, until landing is assured. Reduce airspeed to cross runway threshold (50 ft) at V_{REF}.
Flaps 15—Increase Speed by 10 KIAS (130+10)
Flaps 25—Increase Speed by 10 KIAS (V_{REF25}+10)
Flaps 45—Increase Speed by 5 KIAS (V_{REF45}+5)

Go-Around procedure:
Reduce values from Maximum Landing Weight Approach Climb Limited charts by:
1500 lbs. for PW 118 Engines
1544 lbs. for PW 118A and 118B Engines
Flaps 15—Increase approach climb speed by 10 KIAS (V_2+10);
Decrease approach climb gradient by:
3.0% for PW 118 Engines
2.9% for PW 118A and 118B Engines
Flaps 25—Increase landing climb speed by 10 KIAS (V_{REF25}+10)
Flaps 45—Increase landing climb speed by 5 KIAS (V_{REF}+5)
CAUTION: The ice protection systems must be turned on immediately (except leading edge de-icers during takeoff) when the ICE CONDITION light illuminates on the multiple alarm panel or when any ice accretion is detected by visual observation or other cues.
CAUTION: Do not interrupt the automatic sequence of operation of the leading edge de-ice boots once it is turned ON. The system should be turned OFF only after leaving the icing conditions and after the protected surfaces of the wing are free of ice.''

Ice Detector Installation

(b) For airplanes identified in any of Parts I, II, III, IV, V, and VI of EMBRAER Service Bulletin 120–30–0027, Change 02, dated December 3, 1997; Change 03, dated June 26, 1998; or Change 04, dated July 13, 1999: Within 30 days after March 5, 2001, (the effective date of AD 2001–02–06, amendment 39–12090), install an ice detector system in accordance with the service bulletin.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–26–06, amendment 39–10249, are approved as alternative methods of compliance with this AD.

(3) Incorporation of Revision 50 of the EMBRAER AFM–120/79, dated November 3, 1997, into the AFM, is considered to be an approved alternative method of compliance with the requirements of 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 Atlanta 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) The ice detector system installation shall be done in accordance with EMBRAER Service Bulletin 120–30–0027, Change 02, dated December 3, 1997; EMBRAER Service Bulletin 120–30–0027, Change 03, dated June 26, 1998; or EMBRAER Service Bulletin 120–30–0027, and Change 04, dated July 13, 1999. The incorporation by reference of those documents was approved previously by the Director of the Federal Register, as of March 5, 2001 (66 FR 8082, January 29, 2001). Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–06–03R1, dated December 15, 1997.

Effective Date

(f) This amendment becomes effective on April 16, 2001.

Issued in Renton, Washington, on March 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–7734 Filed 3–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–2]

Amendment of Class D Airspace; Valdosta Moody AFB, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Valdosta Moody AFB, GA. Operational requirements necessitate that the new T–6 turboprop trainer aircraft at Moody AFC be flown in an extended Visual Flight Rules (VFR) traffic pattern. As a result, additional airspace is required beyond the existing 5-mile Class D airspace to contain these aircraft. The U.S. Air Force has requested that the Valdosta Moody AFB, GA, Class D airspace be extended to a 7-mile radius of Moody AFB.

EFFECTIVE DATE: 0901 UTC, July 12, 2001.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On January 30, 2001, the FAA proposed to amend Part 71 of the Federal Aviation regulations (14 CFR Part 71) by amending Class D airspace at Valdosta Moody AFB, GA (66 FR 9986) at the request of the U.S. Air

Force, the primary airspace user. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in 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 D designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class D airspace at Valdosta Moody AFB, GA.

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 optionally current. It, therefore, (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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

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; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 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 5000 Class D Airspace

* * * * *

ASO GA D Valdosta Moody AFB, GA [Revised]

Valdosta, Moody AFB, Ga
(Lat. 30°58′07″N, long. 83°11′35″W)

That airspace extending upward from the surface, to and including 2,700 feet MSL, within a 7-mile radius of Moody AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on March 19, 2001.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–7952 Filed 3–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–35]

Amendment to Class E Airspace; Omaha, NE; Collection

AGENCY: Federal Aviation Administration, DOT.

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

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Omaha, NE, and corrects an error in the airspace designation as published in the **Federal Register** on January 31, 2001 (66 FR 8361)

EFFECTIVE DATE: 0901 UTC, May 17, 2001.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 31, 2001 (66 FR 8361, Airspace Docket No. 00–ACE–35). An error was subsequently discovered that the airspace designation of Council Bluffs, IA should be Omaha, NE. This action corrects that error. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period the regulation would become effective on May 17, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace designation as published in the **Federal Register** on January 31, 2001 (66 FR 8361), (**Federal Register** Document 01–1548; page 8361, column 1 and page 8362, column 1), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

ACE NE E5 Omaha, NE [Corrected]

On page 8361, in the first column, line six, correct the airspace designation by removing ''Council Bluffs, IA'' and adding ''Omaha, NE.'' On page 8362, in the first column, line 30, correct the airspace designation by removing ''ACE IA E5 Council Bluffs, IA [Revised]'' and adding ''ACE NE E5 Omaha, NE [Revised].''

* * * * *

Issued in Kansas City, MO on March 15, 2001.

H.J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 01–7955 Filed 3–29–01; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2001–9054]

RIN 2105–AD00

Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is revising its rules governing airline computer reservations systems (CRSs) by changing

the rules' expiration date from March 31, 2001, to March 31, 2002. If the expiration date were not changed, the rules would terminate on March 31, 2001. This extension of the current rules will keep them in effect while the Department carries out its reexamination of the need for CRS regulations. The Department has concluded that the current rules should be maintained because they appear to be necessary for promoting airline competition and helping to ensure that consumers and their travel agents can obtain complete and accurate information on airline services. The rules were previously extended from December 31, 1997, to March 31, 1999, then to March 31, 2000, and then to March 31, 2001.

DATES: This rule is effective on March 31, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on ''search.'' On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on ''search.'' An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara/index.html.*

SUPPLEMENTARY INFORMATION: Section 255.12 of the rules establishes a sunset date for the rules to ensure that we periodically reexamine the need for the rules and their effectiveness. The original sunset date was December 31, 1997. We have changed it three times, so the current sunset date is March 31, 2001. 62 FR 66272 (December 18, 1997); 64 FR 15127 (March 30, 1999); and 65 FR 16808 (March 30, 2000). We concluded that these extensions were necessary to prevent the harm that would arise if the CRS business were not regulated and that extending the rules would not impose substantial costs on the industry.

We are now changing the sunset date to March 31, 2002, because we have been unable to complete our reexamination of the current rules by March 31, 2001. Since we believed that the rules should remain in effect until we complete that process, we proposed an additional extension of the rules' expiration date to March 31, 2002, to achieve that result. 66 FR 13860 (March 8, 2001). Our notice of proposed rulemaking gave interested parties an opportunity to comment on our proposal. Comments were filed by America West, Delta, Orbitz, and Worldspan, each of whom supported the proposal, and the Air Carrier Association of America, which urged us to suspend one of the rules pending reexamination.

Background

In 1992 the Department adopted its rules governing CRS operations, 14 CFR Part 255, because they were necessary to protect airline competition and to ensure that consumers can obtain accurate and complete information on airline services. 57 FR 43780 (September 22, 1992). Because almost all airlines found it essential to participate in each system, market forces did not discipline the price and quality of services offered airlines by the systems. Travel agents depended on CRSs to provide airline information and make bookings for their customers, and agencies typically relied on one system to obtain information on airline services and to make bookings. One or more airlines or airline affiliates, moreover, owned each of the systems and could operate the system in ways designed to prejudice the competitive position of other airlines.

The rules have always had a sunset date to ensure that we would periodically reexamine whether the rules were necessary and effective. 14 CFR 255.12; 57 FR 43829–43830 (September 22, 1992). We began a proceeding to determine whether the rules are necessary and should be readopted and, if so, whether they should be modified, by issuing an advance notice of proposed rulemaking. 62 FR 47606 (September 10, 1997). Last year we published a supplemental advance notice of proposed rulemaking that asked the parties to update their comments in light of recent developments and to comment on whether any rules should be adopted regulating the use of the Internet in airline distribution. 65 FR 45551 (July 24, 2000). Almost all of the parties responding to our supplemental advance notice of proposed rulemaking (and the initial advance notice of proposed rulemaking) contend that CRS rules remain necessary. Few parties argue that the continued regulation of the CRS business is harmful and unnecessary. An extension of the current rules pending completion of the current reexamination of those rules would be consistent with the positions taken by most of the commenters.

We have also been informally studying recent developments in airline distribution and the proposed business plan and operational strategy of Orbitz, a travel website being developed by five major U.S. airlines. *See* July 20, 2000, Statement of A. Bradley Mims, Deputy Assistant Secretary for Aviation and International Affairs, before the Senate Committee on Commerce, Science, and Transportation. In addition, in recent years we have amended the rules twice to further promote competition. 62 FR 59784 (November 5, 1997); 62 FR 66272 (December 18, 1997).

Our Proposed Extension of the CRS Rules

We proposed again to change the expiration date for our CRS rules to March 31, 2002, so that the rules would remain in effect while we complete our reexamination of the need for the rules and their effectiveness. 66 FR 13860 (March 8, 2001). We could not finish the steps required for our overall reexamination of our rules by the current expiration date, March 31, 2001. In addition, we wished to complete our informal studies of airline distribution developments before we determine whether to propose readopting the rules.

Changing the sunset date to March 31, 2002, would preserve the status quo until we determine whether the rules should be readopted and, if so, how they should be modified. Maintaining the current rules would be consistent with the expectations of the systems and their users—airlines and travel agencies—that each system would operate in compliance with the rules. Systems, airlines, and travel agencies, moreover, would be unreasonably burdened if the rules were allowed to expire and we later determined that those rules (or similar rules) should be adopted, since they could have changed their business methods in the meantime.

In addition, extending the rules seemed necessary to protect airline competition and consumers against unreasonable and unfair practices. Our past examinations of the CRS business and airline marketing showed that CRSs were still essential for the marketing of the services of almost all airlines. 66 FR 13862 citing 57 FR 43780, 43783–43784 (September 22, 1992). CRS rules were necessary because the airlines relied heavily on travel agencies for distribution, because travel agencies relied on CRSs, because most travel

agency offices used only one CRS, because creating alternatives for CRSs and getting travel agencies to use them would be difficult, and because non-owner airlines were unable to cause agencies to use a CRS that provided airlines better or less expensive service instead of another that provided poorer or more expensive service. If an airline did not participate in a system used by a travel agency, that agency was less likely to book its customers on that airline. As a result of the importance of marginal revenues in the airline industry, an airline could not afford to lose access to a significant source of revenue. Almost all airlines therefore had to participate in each CRS, and CRSs did not need to compete for airline participants. We believed that these findings were still valid despite such developments as the increasing importance of the Internet for airline distribution. 66 FR 13862.

We are well aware that we need to reexamine the rules in light of recent developments, such as the growing use of the Internet and the weakening of ties between some of the systems and their former airline owners. 66 FR 13862. We noted, however, that most of the parties that responded to the advance notice of proposed rulemaking and the supplemental advance notice of proposed rulemaking had alleged that the rules remained necessary, and most of them urged us to strengthen them further to protect airlines and travel agencies against potential abuses by system owners.

We therefore tentatively concluded that our past findings on the need for CRS rules are sufficiently valid to justify a short-term extension of the rules' expiration date. 66 FR 13862.

We further noted that our obligation under section 1102(b) of the Federal Aviation Act, recodified as 49 U.S.C. 40105(b), to act consistently with the United States' obligations under treaties and bilateral air services agreements supported an extension of the rules. Many of those bilateral agreements assure the airlines of each party a fair and equal opportunity to compete, and our rules provide an assurance of fair and nondiscriminatory treatment for foreign airlines. 66 FR 13862.

We recognized that the delay in completing the rules' reexamination was regrettable in view of the need to revise our rules to reflect current industry conditions, possibly including an extension of the rules to cover the Internet. We explained that we have had to address other airline competition issues that appeared to be more urgent and that the current rules seem to address the most serious potential competitive and consumer protection issues created by the use of computer reservations systems in airline distribution. 66 FR 13861–13862.

The need to make the final rule effective by March 31, 2001, the current sunset date, caused us to shorten the comment period to ten days. 66 FR 13860.

Comments

Worldspan supports the proposed extension on the ground that we need to undertake a thorough review of the issues raised in our advance notices of proposed rulemaking and the parties' comments. Worldspan argues that we should conduct a comprehensive review of the issues without attempting to address certain issues individually. Delta supports the extension but urges us to proceed as quickly as possible with issuing new rules. America West supports the extension but contends that we should take immediate action to control the level of the booking fees charged airlines participating in the systems. Orbitz, which has filed comments asserting that the existing rules have shortcomings, supports the extension if we have decided that we need more time for our overall reassessment of the complex issues presented by the rules.

The Air Carrier Association of America, a trade association for low-fare airlines, took no position on whether the rules should be extended. The Association instead argued that we should immediately suspend section 255.10(a), which requires each system to make available to its participating airlines any marketing and booking data that it chooses to generate from the bookings made through the system.

Final Rule

We are changing the rules' sunset date to March 31, 2002, as we proposed. Delta, America West, Worldspan, and Orbitz support our proposal, and no one has objected to it. We based our proposal on the findings made by us in earlier CRS rulemakings and the position of most of the parties in the underlying rulemaking (Docket OST–97–2881) that CRS rules are still necessary. 65 FR at 11011. In our overall reexamination of the rules we will, of course, consider whether recent developments, such as the divestiture by several airlines of their CRS ownership interests, indicate that the justification and need for some or all of the CRS rules has ended.

America West urges us to act quickly on the specific rule proposals of interest to it. We will consider its arguments as part of our consideration of procedures for completing the reexamination of the rules and for updating the rules to reflect current industry conditions.

We are not suspending section 255.10(a) as requested by the Air Carrier Association. A suspension of the section would not achieve the result sought by the Association, the denial of access by large airlines to the marketing and booking data produced and sold by the systems. Suspending the section would only end the systems' obligation to make the data available to all participating airlines. Unless we adopted a rule prohibiting the release of the data, the systems would be able to continue selling it to airline and non-airline firms. We recognize the importance of reexamining the provision, as we stated in our original advance notice of proposed rulemaking, 62 FR 47610, and we intend to see whether we should change the systems' obligation and ability to sell marketing and booking data. We prefer to do so in the context of our overall reexamination of the rules, since we must also consider the arguments made by United and others that the rules should be terminated. The Association based its request on the need for the Department to take steps to promote a competitive airline industry. We agree that we have a responsibility to ensure competition, and we are considering options for carrying out that responsibility.

As we noted, we have issued a supplemental notice last year asking the parties to update their comments in light of recent developments, and we are completing our informal studies of airline distribution. These steps will enable us to move forward promptly on the rulemaking. 66 FR 13862.

Effective Date

We have determined for good cause to make this amendment effective on March 31, 2001, rather than thirty days after publication as required by the Administrative Procedure Act, 5 U.S.C. 553(d), except for good cause shown. To maintain the current rules in force, we must make this amendment effective by March 31, 2001. Since the amendment preserves the status quo, it will not require the systems, airlines, and travel agencies to change their operating methods. As a result, making the amendment effective less than thirty days after publication will not burden anyone.

Regulatory Process Matters

Regulatory Assessment

This rule is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been

reviewed by the Office of Management and Budget under that order. The rulemaking is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

As stated in our notice of proposed rulemaking, we tentatively concluded that maintaining the current rules would not impose significant costs on the systems. They have already taken all the steps necessary to comply with the rules' requirements on displays and functionality, and complying with those rules on a continuing basis does not impose a substantial burden on them. Maintaining the rules would benefit participating airlines, since otherwise they could be subjected to unreasonable terms for participation, and would benefit consumers, who might otherwise be given incomplete or inaccurate information on airline services. The rules also contain provisions designed to prevent certain types of abuses in the systems' contracts with travel agency subscribers. 66 FR 13862–13863.

Our last major CRS rulemaking included our preparation of a tentative economic analysis published with our notice of proposed rulemaking and our decision to make that analysis final when we issued our final rule. Since we believed that that analysis remained applicable to our proposal to extend the rules' expiration date, we reasoned that no new regulatory impact statement appeared to be necessary. We stated, however, that we would consider comments from any party on that analysis before making our proposal final. 66 FR 13863.

No one filed comments on the economic analysis, so we are basing this rule on the analysis used in our last comprehensive CRS rulemaking. We will prepare a new economic analysis as part of our review of the existing rules, if we determine that rules remain necessary.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to keep small entities from being unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. airlines and smaller travel agencies.

Our notice of proposed rulemaking set forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule. 66 FR 13863. We additionally noted that maintaining the current rules would not modify the existing regulation of small businesses. We cited our final rule in our last major CRS rulemaking, which contained a regulatory flexibility analysis on the impact of the rules. We determined on the basis of that analysis that the rules did not have a significant economic impact on a substantial number of small entities. Our notice proposing to extend the rules' sunset date stated that that analysis appeared to be valid for that proposed extension. We therefore adopted that analysis as our tentative regulatory flexibility statement, and we stated that we would consider any comments filed on that analysis in connection with this proposal. 66 FR 13863.

Continuing our current CRS rules would primarily affect two types of small entities, smaller airlines and travel agencies. If the rules enable airlines to operate more efficiently and reduce their costs, they would also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be, although the difference may be small.

The maintenance of the rules would protect smaller non-owner airlines from several potential system practices that could injure their ability to operate profitably and compete successfully. The rules, for example, limit the ability of each system to bias its displays in favor of its affiliated airlines and against other airlines, since the rules prohibit systems from ranking and editing displays of airline services on the basis of carrier identity. The rules also prohibit charging participating airlines discriminatory fees. No smaller airline has a CRS ownership interest. Market forces do not significantly influence the systems' treatment of airline participants. Thus, if we did not regulate the systems, the systems' owners could use them to prejudice the competitive position of other airlines. The rules, moreover, impose no significant costs on smaller airlines.

The CRS rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful displays of airline services.

We invited interested persons to address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking. 66 FR 13863.

No one commented on our Regulatory Flexibility Act analysis. We will adopt the analysis set forth in the notice of proposed rulemaking.

This rule contains no direct reporting, recordkeeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with this rule.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law. No. 96–511, 44 U.S.C. Chapter 35.

Federalism Assessment

We stated that we had reviewed this rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that the rule 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. This rule will not limit the policymaking discretion of the States. Nothing in this rule would directly preempt any State law or regulation. We are adopting the rule primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. Our notice of proposed rulemaking stated our belief that the policy set forth in the proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. We welcomed comments on our conclusions. 66 FR 13863.

None of the comments addressed our federalism assessment. Therefore, we will make that assessment final. Because the rule will have no significant effect

on State or local governments, as discussed above, no consultations with State and local governments on this rule were necessary.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation amends 14 CFR Part 255 as follows:

PART 255—[AMENDED]

1. The authority citation for Part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12. Termination.

The rules in this part terminate on March 31, 2002.

Issued in Washington, D.C. on March 27, 2001, under authority delegated by 49 CFR 1.56a (h) 2.

Susan McDermott,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 01–7978 Filed 3–28–01; 11:38 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 102, 106, 107, 130, 146, 165, and 190

[Docket No. 01N–0134]

Foods, Infant Formulas, and Dietary Supplements; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is making technical amendments to its regulations that address food labeling, common or usual names for nonstandardized foods, infant formulas, food standards, and dietary supplements. The purpose of the amendments is to update the names, addresses, and phone numbers for FDA offices and professional organizations, to correct minor errors and inadvertent omissions in the Code of Federal Regulations (CFR), and to delete obsolete information. The technical amendments made by this final rule are editorial in nature and are intended to provide accuracy and clarity to the agency's regulations.

DATES: This rule is effective March 30, 2001.

FOR FURTHER INFORMATION CONTACT: Rhonda Rhoda Kane, Office of Nutritional Products, Labeling and Dietary Supplements (HFS–821), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION: FDA is making technical amendments in its regulations under parts 101, 102, 106, 107, 130, 146, 165, and 190 (21 CFR parts 101, 102, 106, 107, 130, 146, 165, and 190). Specifically, as a result of an FDA reorganization in 2000, the Office of Special Nutritionals and the Office of Food Labeling were combined to form the Office of Nutritional Products, Labeling and Dietary Supplements. Therefore, this rule updates the name and mail codes for this new office in FDA regulations on food labeling (part 101), common or usual name for nonstandardized foods (part 102), infant formula quality control procedures (part 106), infant formula (part 107), food standards (part 130), and new dietary ingredient notification requirements for dietary supplements (part 190). In parts 106 and 107, pertaining to infant formulas, this rule also corrects FDA emergency phone numbers and a regulation section citation for FDA district offices. Similarly, this rule updates the names, addresses, and other contact information for several professional organizations cited in FDA regulations on food labeling (part 101) and requirements for standardized foods (part 146). In addition, FDA discovered that minor errors and omissions were inadvertently published in the CFR affecting its regulations on food labeling (part 101), infant formulas (parts 106 and 107), and requirements for standardized foods (part 165). This rule makes the needed corrections. Finally, due to the passage of time, certain food labeling provisions for juices (§ 101.17) are now obsolete and are removed from FDA regulations by this rule.

This final regulation makes the noted technical amendments. The final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required. The changes addressed in this final rule are as follows:

1. FDA's recent reorganization resulted in changes in the names of several of its offices, mail codes, phone numbers, and staff contacts cited in its regulations. This rule amends parts 101, 102, 106, 107, 130, and 190 to incorporate all of these types of changes and other minor corrections as noted below:

- Throughout part 101, pertaining to food labeling, the Office of Food Labeling (HFS–150) or the Center for Food Safety and Applied Nutrition (HFS–150) is cited as the FDA office responsible for this part's provisions. The new name and mail code for the Office of Food Labeling are the Office of Nutritional Products, Labeling and Dietary Supplements (HFS–800). The new mail code for the Center for Food Safety and Applied Nutrition pertaining to part 101 is (HFS–800). The new FDA office name and mail code are substituted for the old ones wherever they appear in part 101.
- In § 101.93(a)(1), dietary supplement manufacturers, packers or distributors are required to notify FDA no later than 30 days post marketing about any structure or function claims made on the labeling of their dietary supplements. The name and mail code of the FDA office to contact for this purpose are changed from Office of Special Nutritionals (HFS–450) to the Office of Nutritional Products, Labeling and Dietary Supplements (HFS–810).
- In § 102.23(c)(5), pertaining to requirements for peanut spreads, the FDA mail code for the Center for Food Safety and Applied Nutrition is changed from (HFS–150) to (HFS–800).
- In § 106.120(a), pertaining to notification requirements for new formulations and reformulations of infant formulas, the FDA mail code for the Center for Food Safety and Applied Nutrition is changed from (HFS–450) to (HFS–830).
- In § 106.20(b), the FDA emergency phone number for manufacturers to call to report adulterated or misbranded infant formulas is changed from 202–737–0448 to 301–443–1240. Also in § 106.120(b), the regulatory section citation for a list of FDA district offices for manufacturers to contact to report this infant formula problem is currently erroneously stated in two places as § 5.115 and is corrected to read § 5.215.
- In § 107.50(e)(1), pertaining to notification requirements for exempt infant formulas, the FDA mail code for the Center for Food Safety and Applied Nutrition is changed from (HFS–450) to (HFS–830).
- In § 107.50(e)(2), the FDA emergency phone number for manufacturers to call to report adulterated or misbranded exempt infant formulas is changed from 202–737–0448 to 301–443–1240. Also in § 107.50(e)(2), the regulatory section citation for a list of FDA district offices for manufacturers to contact to report this problem is currently erroneously

stated in two places as § 5.115 and is corrected to read § 5.215.

• In §§ 107.230(e), 170.240(b), and 107.250, pertaining to infant formula recalls, notification requirements for violative infant formulas, and the termination of an infant formula recall, respectively, the regulatory section citation for a list of FDA district offices for manufacturers to contact to report these situations is currently erroneously stated one or more times as § 5.115 and is corrected to read § 5.215. Also, in § 107.240(b), the FDA emergency phone number for manufacturers to call to report violative infant formula is changed from 202–857–8400 to 301–443–1240.

• In § 130.17(c), the regulations currently state the Chief, Food Standards Branch, Office of Food Labeling, Center for Food Safety and Applied Nutrition (HFS–158) as the FDA contact to whom a request for a temporary permit must be filed. This temporary permit is for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity. The new FDA contact for filing such a permit is the Team Leader, Conventional Foods Team, Division of Standards and Labeling Regulations, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–822).

• In 190.6(a), the FDA name and mail code for manufacturers or distributors to submit a premarket notification for a dietary supplement containing a new dietary ingredient are changed from the Office of Special Nutritionals (HFS–450) to the Office of Nutritional Products, Labeling and Dietary Supplements (HFS–820).

2. A final rule, published in the **Federal Register** on September 23, 1997 (62 FR 49825), amended FDA's food labeling regulations to establish requirements for the identification of dietary supplements and for their nutrition labeling and ingredient labeling in § 101.4. Section 101.4(h) requires that the product label for dietary supplements that contain dietary ingredients that are botanicals to state the common or usual names of these ingredients. Current regulations also require that the common or usual names stated on the label for these ingredients be consistent with the names standardized in *Herbs of Commerce*, 1992 edition, which was incorporated by reference. The address for the American Herbal Products Association, the publisher and source of copies of the *Herbs of Commerce*, has changed from 4733 Bethesda Ave., suite 345, Bethesda, MD 20814 to 8484 Georgia Ave., suite 370, Silver Spring, MD 20910. This rule amends the address cited in § 101.4(h) for the American Herbal Products Association and includes the following phone and facsimile numbers and electronic mail address as additional ways to contact the association: phone: 301–588–1171, FAX: 301–588–1174, and e-mail: ahpa@ahpa.org.

3. A final rule, published in the **Federal Register** on September 23, 1997 (62 FR 49859), revised FDA's regulations on nutrient content claims and health claims for conventional foods and dietary supplements. FDA discovered two inadvertent errors from that rulemaking that affect §§ 101.14 and 101.54. Old § 101.14(a)(4) was removed and old § 101.14(a)(5) was redesignated as the new § 101.14(a)(4). At that time, FDA did not realize that § 101.14(e)(3) referenced the original § 101.14(a)(5), which is now paragraph (a)(4). Therefore, this rule amends § 101.14(e)(3) by referring to § 101.14(a)(4) and not (a)(5). In addition, when § 101.54(e)(1) was revised, FDA inadvertently omitted the terms ''extra'' and ''plus'' as synonyms for the nutrient content claim ''more.'' Consequently, this rule reinserts the additional terms for ''more'' in § 101.54(e)(1).

4. In an amendment to § 101.17 published in the **Federal Register** on July 8, 1998 (63 FR 37030), FDA allowed, for a specified period of time, the warning statements required in the labeling of juices to be displayed on signs and placards located near products sold in stores as an alternative to having this information included on the product labels themselves. Section 101.17(g)(4)(i) and (g)(4)(ii), respectively, stated that the dates for this labeling flexibility were September 8, 1999, for apple juice or apple cider and November 5, 1999, for all other juices. Since these dates have passed, these sections of the regulations are no longer needed. This rule deletes these two paragraphs as well as the words ''except that'' from that end of the sentence in the introductory § 101.17(g)(4) directly preceding § 101.17(g)(4)(i) and (g)(4)(ii).

5. A final rule, published in the **Federal Register** on March 24, 1998 (63 FR 14035), amended FDA's regulations to reflect a change in the name and address for the association of Official Analytical Chemists. The association's old address was P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044. The association's new name and address are AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504. FDA discovered that there are two instances in parts 101 and 146 where this change was inadvertently overlooked. Therefore, this rule amends § 101.100(a)(4), pertaining to exemptions from food labeling requirements, and § 146.132(a)(1), pertaining to food standard requirements for canned grapefruit juice, to reflect the current name and address for AOAC INTERNATIONAL.

6. In § 165.110(b)(2) and (b)(4)(i)(C), pertaining to the microbiological and chemical quality testing of bottled water, the regulations currently state the address for the American Public Health Association as 1015 15th (or Fifteenth) St. NW., Washington, DC 20005. The American Public Health Association is the source of copies of a resource incorporated by reference for analyzing the quality of water. The new address for the American Public Health Association is 800 I St. NW., Washington, DC 20001. This rule amends part 165 to reflect the new address of the American Public Health Association.

7. In § 165.110(b)(4)(iii)(E), (b)(4)(iii)(E)(*1*)(*ii*), and (b)(4)(iii)(E)(*11*)(*i*), pertaining to the requirements for bottled water, current regulations mistakenly state the address for the National Technical Information Service (NTIS), U.S. Department of Commerce as 5825 Port Royal Rd., Springfield, VA 22161. NTIS is the source of copies of a resource incorporated by reference for analyzing trace minerals in water. The correct street address is 5285 Port Royal Rd., Springfield, VA 22161. In addition, these paragraphs inconsistently refer to the National Technical Information Service by either including or excluding the acronym (NTIS) with the name or by using the acronym without the name spelled out. This rule amends part 165 to consistently and correctly cite the name and address for the National Technical Information Service (NTIS).

Publication of this document constitutes final action of these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because these amendments are merely correcting nonsubstantive errors.

List of Subjects

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Oils and fats, Onions, Potatoes, Seafood.

21 CFR Part 106

Food grades and standards, Infants and children, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 107

Food labeling, Infants and children, Nutrition, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 130

Food additives, Food grades and standards.

21 CFR Part 146

Food grades and standards, Fruit juices.

21 CFR Part 165

Beverages, Bottled water, Food grades and standards.

21 CFR Part 190

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 101, 102, 106, 107, 130, 146, 165, and 190 are amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

Part 101 [Amended]

2. Part 101 is amended by removing the words ''Office of Food Labeling (HFS–150)'' wherever they appear and by adding in their place ''Office of Nutritional Products, Labeling and Dietary Supplements (HFS–800)'', and by removing the old mail code ''(HFS–150)'' after the Center for Food Safety and Applied Nutrition wherever it appears and by adding in its place the new mail code ''(HFS–800)''.

§ 101.4 [Amended]

3. Section 101.4 *Food; designation of ingredients* is amended in paragraph (h) by removing the address for American Herbal Products Association ''4733 Bethesda Ave., suite 345, Bethesda, MD 20814'' and by adding in its place ''8484 Georgia Ave., suite 370, Silver Spring, MD 20910, 301–588–1171, FAX 301–588–1174, e-mail: ahpa@ahpa.org''.

§ 101.14 [Amended]

4. Section 101.14 *Health claims: general requirements* is amended in paragraph (e)(3) by removing the words ''paragraph (a)(5)'' and by adding in their place ''paragraph (a)(4)''.

§ 101.17 [Amended]

5. Section 101.17 *Food labeling warning and notice statements* is amended in paragraph (g)(4) by removing the words '', except that:'' from the end of the sentence in the introductory paragraph, and by adding in their place a period after the word ''container'', and by removing paragraphs (g)(4)(i) and (g)(4)(ii).

§ 101.54 [Amended]

6. Section 101.54 *Nutrient content claims for ''good source,'' ''high,'' ''more,'' and ''high potency''* is amended in paragraph (e)(1) by removing the words 'and ''added'' ' and by adding, in their place the words ' ''added,'' ''extra,'' and ''plus'' '.

§ 101.93 [Amended]

7. Section 101.93 *Certain types of statements for dietary supplements* is amended in paragraph (a)(1) by removing the words ''Office of Special Nutritionals (HFS–450)'' and by adding in their place ''Office of Nutritional Products, Labeling and Dietary Supplements (HFS–810)''.

§ 101.100 [Amended]

8. Section 101.100 *Food; exemptions from labeling* is amended in paragraph (a)(4) by removing the words ''Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044'' and by adding in their place ''AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504''.

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

9. The authority citation for 21 CFR part 102 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 371.

§ 102.23 [Amended]

10. Section 102.23 *Peanut spreads* is amended in paragraph (c)(5) by removing the mail code ''(HFS–150)'' after the words ''Center for Food Safety and Applied Nutrition'' and by adding in its place ''(HFS–800)''.

PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

11. The authority citation for 21 CFR part 106 continues to read as follows:

Authority: 21 U.S.C. 321, 350a, 371.

12. Section 106.120 is amended in paragraph (a) by removing the mail code ''(HFS–450)'' after the words ''Center for Food Safety and Applied Nutrition'' and by adding in its place the new mail code ''(HFS–830)'', and in paragraph (b) by revising the second and third sentences to read as follows:

§ 106.120 New formulations and reformulations.

* * * * *

(b) * * * This notification shall be made, by telephone, to the Director of the appropriate Food and Drug Administration district office specified in § 5.215 of this chapter. After normal business hours (8 a.m. to 4:30 p.m.) the FDA emergency number, 301–443–1240, shall be used. The manufacturer shall send a followup written confirmation to the Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and to the appropriate Food and Drug Administration district office specified in §5.215.

PART 107—INFANT FORMULA

13. The authority citation for 21 CFR part 107 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 350a, 371.

14. Section 107.50 is amended in paragraph (e)(1) by removing the mail code ''(HFS–450)'' after the words ''Center for Food Safety and Applied Nutrition'' and by adding in its place the new mail code ''(HFS–830)'', and in paragraph (e)(2) by revising the second and third sentences to read as follows:

§ 107.50 Terms and conditions.

* * * * *

(e) * * *

(2) * * * This notification shall be made, by telephone, to the Director of the appropriate FDA district office specified in § 5.215 of this chapter. After normal business hours (8 a.m. to 4:30 p.m.), the FDA emergency number, 301–443–1240, shall be used. The manufacturer shall send a followup written confirmation to the Center for Food Safety and Applied Nutrition (HFS–605), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and to the appropriate FDA district office specified in § 5.215.

§ 107.230 [Amended]

15. Section 107.230 *Elements of an infant formula recall* is amended in paragraph (e) by removing the reference to ''§ 5.115'' and by adding in its place ''§ 5.215''.

16. Section 107.240 *Notification requirements* is amended in paragraph (b) by removing the reference to ''§ 5.115'' and by adding in its place ''§ 5.215'', and by removing the old emergency phone number ''202–857–8400'' and by adding in its place the new emergency phone number ''301–443–1240''.

§ 107.250 [Amended]

17. Section 107.250 *Termination of an infant formula recall* is amended in the introductory paragraph by removing the reference to ''§ 5.115'' and by adding in its place ''§ 5.215''.

PART 130—FOOD STANDARDS: GENERAL

18. The authority citation for 21 CFR part 130 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 341, 343, 371.

§ 130.17 [Amended]

19. Section 130.17 *Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity* is amended in paragraph (c) by removing the words ''Chief, Food Standards Branch, Office of Food Labeling, Center for Food Safety and Applied Nutrition (HFS–158)'' and by adding in their place ''Team Leader, Conventional Foods Team, Division of Standards and Labeling Regulations, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–822)''.

PART 146—CANNED FRUIT JUICES

20. The authority citation for 21 CFR part 146 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

§ 146.132 [Amended]

21. Section 146.132 *Grapefruit juice* is amended in paragraph (a)(1) by removing the words ''Association of Official Analytical Chemists International, 1111 N. 19th St., Suite 210, Arlington, VA 22209'' and by adding in their place ''AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504''.

PART 165—BEVERAGES

22. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

§ 165.110 [Amended]

23. Section 165.110 *Bottled water* is amended as follows:

a. In paragraph (b)(2) by removing the words ''American Public Health Association, 1015 15th St. NW., Washington, DC 20005'' and by adding in their place ''American Public Health Association, 800 I St. NW., Washington, DC 20001'';

b. In paragraph (b)(4)(i)(C) by removing the words ''American Public Health Association, 1015 Fifteenth St. NW., Washington, DC 20005'' and by adding in their place ''American Public Health Association, 800 I St. NW., Washington, DC 20001'';

c. In paragraph (b)(4)(iii)(E) by removing the words ''National Technical Information Service (NTIS), U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161'' and by adding in their place ''National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161'';

d. In paragraph (b)(4)(iii)(E)(*1*)(*ii*) by removing the words ''National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161'' and by adding in their place ''National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161''; and

e. In paragraph (b)(4)(iii)(E)(*11*)(*i*) by removing the words ''NTIS, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161'' and by adding in their place ''National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161''.

PART 190—DIETARY SUPPLEMENTS

24. The authority citation for 21 CFR part 190 continues to read as follows:

Authority: Secs. 201(ff), 301, 402, 413, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff), 331, 342, 350b, 371).

§ 190.6 [Amended]

25. Section 190.6 *Requirement for premarket notification* is amended in paragraph (a) by removing the words ''Office of Special Nutritionals (HFS–450)'' and by adding in their place ''Office of Nutritional Products, Labeling and Dietary Supplements (HFS–820)''.

Dated: March 27, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–7980 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 809 and 864

[Docket No. 97N–0135]

Hematology and Pathology Devices; Reclassification; Restricted Devices; OTC Test Sample Collection Systems for Drugs of Abuse Testing; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the rule entitled ''Hematology and Pathology Devices; Reclassification; Restricted Devices; OTC Test Sample Collection Systems for Drugs of Abuse Testing,'' published in the **Federal Register** on April 7, 2000 (65 FR 18230).

DATES: The effective date of the ''Hematology and Pathology Devices; Reclassification; Restricted Devices; OTC Test Sample Collection Systems for Drugs of Abuse Testing,'' amending 21 CFR parts 809 and 864 published in the **Federal Register** on April 7, 2000 (65 FR 18230), is delayed for 60 days, from April 9, 2001, to a new effective date of June 8, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION: The rule: (1) Reclassifies over-the-counter (OTC) test sample collection systems for drugs of abuse testing from class III (premarket approval) into class I (general controls) and exempts them from premarket notification (510(k)) and current good manufacturing practice requirements; (2) designates OTC test sample collection systems for drugs of abuse testing as restricted devices under the Federal Food, Drug, and Cosmetic Act; and (3) establishes restrictions intended to assure consumers that: The underlying laboratory test(s) are accurate and reliable, the laboratory performing the test(s) has adequate expertise and competency, and the product has adequate labeling and

methods of communicating test results to consumers.

The agency's implementation of this delay of effective date without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The temporary 60-day delay in the effective date is necessary to give the Department of Health and Human Services officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001, sent to all executive departments and agencies. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly issuance and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Dated: March 23, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–7833 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 3625]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Final rule.

SUMMARY: This final rule amends the Schedule of Fees for Consular Services. Specifically, it reduces to $0 the current $100 fee for determination or adjudication of citizenship for applicants born abroad who do not have previously issued U.S. Government documentary proof of citizenship. Because the fee does not accurately reflect the cost of the service, the Department is reducing the fee pending the next fee study.

DATES: Effective March 30, 2001.

ADDRESSES: Office of the Executive Director, Bureau of Consular Affairs, Department of State, SA–1, 10th Floor, 2401 E Street, NW., Washington, DC 20522–0111; fax (202) 663–2499.

FOR FURTHER INFORMATION CONTACT: Susan Abeyta, Office of the Executive Director, Bureau of Consular Affairs, Department of State, SA–1, 10th Floor, 2401 E Street, NW., Washington, DC 20522–0111; telephone (202) 663–2500 telefax (202) 663-2499; e-mail address AbeytaSK@state.gov.

SUPPLEMENTARY INFORMATION: This amendment to the Schedule of Fees is published as a final rule because it will not have adverse impact on the public and because it is important to have a final rule in place as close in time as possible to the February 27, 2001 effective date of the Child Citizenship Act of 2000 (CCA), Public Law 106–395. The Department is reducing to $0 the current $100 fee for adjudication of citizenship cases for persons born abroad who have no prior documentation of their U.S. citizenship. This fee is applicable when a U.S. citizen born abroad applying for a passport cannot present a previous passport, a Consular Report of Birth Abroad, a Certificate of Nationality or a Certificate of Citizenship. The $100 fee reflected the fact that such persons typically are seeking to establish U.S. citizenship long after their birth; as a result, adjudication of their cases is relatively time consuming. At the time of the cost study underlying the fee, the Department estimated that a fee of $100 would ensure full cost recovery, allocate the cost to the actual users, and be consistent with the fee established by the Immigration and Naturalization Service for its comparable service, thus removing any cost-based incentive for applicants to file with one agency over the other. See 62 FR 63478, 63479–80 (Dec. 1, 1997).

The Department has decided to reduce the fee to $0 pending the next fee study for a number of reasons. In practice, the amount of time required by the category of cases varies so greatly that the fee seems excessive in some cases that in fact require little time to adjudicate, while in others it is far below cost recovery. While the $100 fee was intended to average the costs involved over all users of the particular service, the Department wishes to revisit this approach in light of the wide variation in time required for cases covered by the fee. Also, the number of cases to which the fee applies has been relatively small, so that discontinuing the fee will not have a significant impact on fee revenuses. In addition, the Child Citizenship Act of 2000 has created a new class of persons who will be seeking citizenship documentation service and who would be required to pay the $100 fee if it were maintained. The Department believes it best to cease collecting the fee until the cost of this service can be reviewed again.

The Department notes that it is in the process of examining its fees in a number of areas, and that subsequent revisions to the fee schedule may result in the restoration of this fee at an appropriate level or the allocation of the cost of this service to other services to ensure appropriate cost recovery. (Prior to the 1998 amendments to the schedule of fees, the cost of this service was allocated to the passport fee.)

Comment Period and Effective Date—Exceptions

This rule is being promulgated as a final rule without prior notice and comment, and will take effect in less than 30 days after publication. The Department has determined that the rule is exempt from the advance notice and comment procedures of the Administrative Procedures Act under 5 U.S.C. 553(b)(3)(B) (the ''good cause'' exception to notice and comment and 553(d)(3) (the good cause exception to delayed effective date). The rule reduces a consular fee from $100 to zero and hence will benefit the public without causing any related adverse impact. Moreover, it is important to have a final rule in place as close in time as possible to the February 27, 2001 effective date of the Child Citizenship Act of 2000 (CCA), Public Law 106–395.

This fee is established under the user charge statutes, 31 U.S.C. 9701 and 22 U.S.C. 4219, which authorizes the President (who delegated his authority to the Secretary of State in Executive Order 10718 of June 27, 1957), to prescribe the fees to be charged for official services performed by U.S. embassies and consulates. Within the Department, these authorities are delegated to the Under Secretary for Management. There is no one in that position at present, but the Under Secretary's authorities have been delegated by the Secretary to the Assistant Secretary for Diplomatic Security until an Under Secretary for Management is appointed.

The Schedule of Fees for Consular Services is set forth in 22 CFR 22.1, as most recently amended on September 7, 2000 (64 FR 54297).

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule for the reasons set forth above. The rule makes no substantive regulatory changes.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review.

Executive Order 13132

This regulation 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 22

Passports and visas.

Final Rule

Accordingly, this rule amends 22 CFR part 22 as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 *et seq.*; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p.382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. § 22.1, revise item 4 in the table to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
Passport and Citizenship Services	
* * * * * * *	
4. Determination or adjudication of U.S. citizenship for applicants born overseas who have not presented a U.S. passport, Report of Birth Abroad of a Citizen of the United States, or Certificate of Naturalization or Citizenship from the Immigration and Naturalization Service.	No fee.
* * * * * * *	

Dated: March 22, 2001.

David G. Carpenter,

Assistant Secretary for Diplomatic Security, Department of State.

[FR Doc. 01–7921 Filed 3–29–01; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 3626]

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended: Aliens Ineligible To Transit Without Visas (TWOV)

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: Section 212(d)(4)(A) of the Immigration and Nationality Act (INA) permits the Secretary of State, acting jointly with the Attorney General, to waive the visa and passport requirement of INA 212(a)(7)(B) for certain aliens in direct transit through the United States. This waiver allows an alien to transit the United States without a passport and visa provided the alien is traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service (INS) in accordance with INA 233(c) and bears documentation establishing identity and nationality which permits the alien's entry into another country. This rule adds Colombia to the list of countries that are ineligible to transit without visa (TWOV).

DATES: *Effective Date:* This interim rule is effective April 2, 2001.

Comment Date: Written comments may be submitted sixty days from March 30, 2001.

ADDRESSES: Submit comments, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, DC 20520–0106, (202) 663–1204; or e-mail: *odomhe@state.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Authority for Allowing or Prohibiting Transit Without Visa?

Section 212(d)(4)(C) of the Immigration and Nationality Act (INA) provides the authority for the Secretary of State, acting jointly with the Attorney General, to waive the passport and/or visa requirement for a nonimmigrant who is in immediate and continuous transit through the United States and is using a carrier that has entered into a Transit Without Visa (TWOV) Agreement as provided in INA 233(c).

Who Determines Which Countries Can Transit Without a Visa?

Since TWOV does not involve the issuance of a visa, the Department's role in the day-to-day administration of the TWOV program is minimal. Therefore, the Department's regulation at 22 CFR 41.2(i), for the most part, is merely a restatement of the INS regulation on the same subject. The Department does become involved, however, in the designation of those countries whose citizens are ineligible to utilize the TWOV. The current regulation provides a list of ineligible countries.

Which Countries Are Added to the List of Countries Whose Citizens Cannot TWOV?

This rule adds Colombia to the list of countries whose citizens cannot TWOV.

Why Is Colombia Being Added to the List of Countries Whose Citizens Cannot TWOV?

The Department and INS have determined that Colombia's citizens are ineligible to TWOV because of their increasing abuse of the TWOV privilege and Colombia's high nonimmigrant visa refusal rates. Colombian citizens are increasingly using TWOV as an opportunity to claim asylum during their ''transit'' through the U.S.

Interim Rule

How Will the Department of State Amend its Regulations?

This rule, and the INS rule published elsewhere in this issue, amend the list of countries found at 22 CFR 41.2(i) whose citizens the Department and the INS have determined are not eligible for the transit without visa (TWOV) program.

Administrative Procedure Act

The Department is implementing this rule as an interim rule, with a 60-day provision for post-promulgation public comments, based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and 553(d)(3). The Department finds it necessary to implement this rule effective immediately to minimize abuse of the TWOV privilege.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements. The information collection requirement (Form OF–156) contained by reference in this rule was previously approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 41

Aliens, nonimmigrants, passports and visas.

In view of the foregoing, the Department amends 22 CFR as follows:

PART 41—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et. seq.*

2. Amend § 41.2 by revising paragraph (i)(2) to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

(i) * * *

(2) Notwithstanding the provisions of paragraph (i)(1) of this section, this waiver is not available to an alien who is a citizen of: Afghanistan, Angola, Bangladesh, Belarus, Bosnia-Herzegovina, Burma, Burundi, Central African Republic, People's Republic of China, Colombia, Congo (Brazzaville), India, Iran, Iraq, Libya, Nigeria, North Korea, Pakistan, Russia, Serbia, Sierra Leone, Somalia, Sri Lanka, Sudan.

* * * * *

March 12, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 01–8016 Filed 3–29–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8940]

RIN 1545–AY73

Purchase Price Allocation In Deemed and Actual Asset Acquisitions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations relating to deemed and actual asset acquisitions under sections 338 and 1060. The final regulations that were published in the **Federal Register** on Tuesday, February 13, 2001 (66 FR 9925).

DATES: This correction is effective March 16, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Starke (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under

sections 338 and1060 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8940), that were the subject of FR Doc. 01–981 is corrected as follows:

1. On page 9929, in the table, the entry for § 1.197–2(k), *Example 23* is corrected to read as follows:

Section	Remove	Add
* * * * * * *		
1.197–2(k), *Example 23,* paragraph (iv), first sentence	(as these terms are defined in § 1.338–1(c)(13)).	(as these terms are defined in § 1.338&ndas–2(c)(17))
* * * * * * *		

§ 1.338–3 [Corrected]

2. On page 9935, column 3, § 1.338–3, paragraph (b)(3)(iv), paragraph (ii) of *Example 1.,* line 9 from the bottom of the paragraph, the language ''338(h)(3)(A)(iii). See § 1.338–2(b)(3)(ii)(C).'' is corrected to read ''338(h)(3)(A)(iii). See § 1.338–3(b)(3)(ii)(C).''.

§ 1.338–6 [Corrected]

3. On page 9944, column 3, § 1.338–6, paragraph (d), paragraph (ix) of *Example 1* line 1, the language ''The liabilities of T as of the beginning'' is corrected to read '' The liabilities of T1 as of the beginning''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 01–7934 Filed 3–29–01; 8:45 am]

BILLING CODE 4830–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1610

Attorney Misconduct, Sequestration of Witnesses, and Exclusion of Counsel

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This document sets forth new regulations of the Chemical Safety and Hazard Investigation Board (''CSB'') concerning sanctions for repeated attorney misconduct, and the sequestration of witnesses and exclusion of counsel in depositions conducted under subpoena in CSB investigations.

DATES: This rule is effective March 30, 2001.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, (202) 261–7600.

SUPPLEMENTARY INFORMATION: The Chemical Safety and Hazard Investigation Board (''CSB'' or ''Board'') is mandated by law to ''Investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release [within its jurisdiction] resulting in a fatality, serious injury or substantial property damages.'' 42 U.S.C. 7412(r)(6)(C)(i). The Board has developed practices and procedures concerning witness representation in CSB investigations at 40 CFR 1610.1 (66 FR 1050, Jan. 5, 2001).

These regulations amplifies those rules. Because these regulations provide for the possibility of suspension of attorneys from practice before the Board in certain circumstances, the Board determined that the rules and the procedures herein should be published for comment as a proposed rule. These regulations were published as a proposed rule in the **Federal Register** of February 5, 2001 (66 FR 8926). The proposed rule provided for a 30-day comment period. No comments were received in response to the proposed rule and invitation for comments. This final rule is unchanged from the proposed rule.

New section 1610.2 provides for sanctions against attorneys who are involved in repeated acts of misconduct and for hearing procedures for issuing suspensions from practice before the Board.

New section 1610.3 provides for the sequestration of witnesses in investigative proceedings and for the exclusion of attorneys representing multiple witnesses in investigations from witness depositions where the person conducting the deposition, after consultation with the Office of General Counsel, determines that the CSB has concrete evidence that the presence of such attorney would obstruct or impede the investigation. This ''concrete evidence'' standard meets the test set forth by the court in *Professional Reactor Operator Society* v. *Nuclear Regulatory Commission,* 939 F.2d 1047 (D.C. Cir 1991). *See also SEC* v. *Csapo,* 533 F.2d 7 (D.C. Cir. 1976).

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and certifies that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48.

Dated: March 21, 2001.

Christopher W. Warner,

General Counsel.

List of Subjects in 40 CFR Part 1610

Administrative practice and procedure, Investigations.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1610 as follows:

PART 1610—ADMINISTRATIVE INVESTIGATIONS

1. The authority citation for part 1610 continues to read as follows:

Authority: 42 U.S.C. 7412(r)(6)(C)(i), 7412(r)(6)(L), 7412(r)(6)(N).

2. Add § 1610.2 and § 1610.3 to read as follows:

§ 1610.2 Repeated attorney misconduct, sanctions, hearings.

(a) If an attorney who has been sanctioned by the Board for disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of a deposition under § 1610.1(a)(5) is sanctioned again by the Board in a subsequent deposition or investigation, the Board, after offering the attorney an opportunity to be heard, may reprimand, censure the attorney, or suspend the attorney from further practice before the Board for such period of time as the Board deems advisable.

(b) A reprimand or a censure shall be ordered with grounds stated on the record of the proceeding. A suspension shall be in writing, shall state the grounds on which it is based, and shall advise the person suspended of the right to appeal.

(c) An attorney suspended pursuant to this section may within ten (10) days after issuance of the order file an appeal with the Board. The appeal shall be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. If necessary for a full and fair consideration of the facts, the Board as a whole may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. Such presiding officer may be an attorney who is a Member of the Board or is employed in the Office of General Counsel, or an administrative law judge detailed from another agency pursuant to 5 U.S.C. 3344. If the Board refers the matter to a presiding officer, unless the Board provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. Such hearing shall commence as soon as possible. If no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Board, as appropriate, shall notify the state bar(s) to which the attorney is admitted. Such notification shall include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Board.

§ 1610.3 Sequestration of witnesses and exclusion of Counsel.

(a) All witnesses compelled by subpoena to submit to CSB depositions shall be sequestered unless the official conducting the depositions permits otherwise.

(b) Any witness compelled by subpoena to appear at a deposition during a CSB investigation may be accompanied, represented, and advised by an attorney in good standing of his or her choice, pursuant to § 1610.1. However, when the CSB official conducting the investigation determines, after consultation with the Office of General Counsel, that the CSB has concrete evidence that the presence of an attorney representing multiple interests would obstruct and impede the investigation or inspection, the CSB official may prohibit that counsel from being present during the deposition.

(c) The deposing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section, and the witness' counsel, a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after exclusion, must explain the basis for the counsel's exclusion. This statement must also advise the witness of the witness' right to appeal the exclusion decision and obtain an automatic stay of the effectiveness of the subpoena by filing a motion to quash the subpoena with the Board within five days of receipt of this written statement.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section, a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Board. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Board's decision on the motion.

(e) If a witness' counsel is excluded under paragraph (b) of this section, the deposition may, at the witness' request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The deposition may also be rescheduled to a subsequent date established by the CSB, although the deposition shall not be rescheduled by the CSB to a date that precedes the expiration of the time provided in paragraph (d) of this section for appeal of the exclusion of counsel, unless the witness consents to an earlier date.

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BILLING CODE 6350–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Parts 1611 and 1612

Testimony of Employees and Production of Records in Legal Proceedings

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This regulation establishes internal policies and procedures governing when and to what extent employees of the Chemical Safety and Hazard Investigation Board (''CSB'' or ''Board'') may appear as witnesses in third-party litigation or produce CSB records in third-party litigation. The intended effect of this regulation is to conserve the CSB's ability to conduct official business, preserve its employee resources, minimize involvement in matters unrelated to its mission and programs, preserve its impartiality, avoid spending public time and money for private purposes, and to help avoid needless litigation.

DATES: This rule is effective March 30, 2001.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, (202) 261–7600.

SUPPLEMENTARY INFORMATION: Based on the experience of other Federal agencies, there is a strong potential that CSB employees will be requested or subpoenaed to provide testimony or produce records in litigation. CSB regulations have not heretofore clearly specified when its employees are required to respond to subpoenas or produce CSB records. This has resulted in the potential of an employee giving testimony or providing records, which diverts such employee from performing his/her duties, and might create the appearance that the CSB is taking sides in private litigation. This regulation is intended to address this situation by generally prohibiting both voluntary appearances and compliance with subpoenas unless authorized by the CSB.

The need for this regulation is even more acute at the CSB, because pursuant to 42 U.S.C. 7412(r)(6)(G), no part of the conclusions, findings or recommendations of the CSB relating to an accidental release or the investigation thereof, may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report. The legislative history of this provision explains why Congress included it:

The findings, conclusions and recommendations of the Board are not to be

used in civil proceedings for damages which result from an accident investigated by the Board. In conducting its investigations, the Board will need the fullest cooperation from facility owners and operators, equipment suppliers and other parties involved in an accidental release to determine the probable causes of the event. The likelihood that conclusions drawn from information provided to the Board will be used in a suit from damages will discourage full cooperation. Furthermore, and as noted above, the standard of evidence used by the Board in reaching its determinations of probable cause is likely to be less rigorous than evidentiary standards used in a civil proceeding and thus a conclusion, finding or recommendation of the Board should not be given the same weight as other evidence in such a proceeding.

Senate Report 101–228, Clean Air Act Amendments 1990.

Identical language in the National Transportation Safety Board's statute (section 304(c) of the Independent Safety Board Act of 1974) was premised on Congress' ''strong * * * desire to keep the Board free of the entanglement of such suits.'' Rep. No. 93–1192, 93d Cong., 2d Sess., 44 (1974).

The courts have made clear that subpoenas to testify concerning information which U.S. government employees have acquired in the course of performing official duties, or to produce records, are essentially legal actions against the United States for which there has been no waiver of sovereign immunity. Concomitantly, the courts have recognized the authority of Federal agencies to limit compliance with such subpoenas. *See United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). See also *United States* v. *Williams,* 170 F.3d 431 (4th Cir. 1999); *Smith* v. *Cromer,* 159 F.3d 875 (4th Cir. 1998); *Moore* v. *Armour Pharmaceutical Co.,* 927 F.2d 1194 (11th Cir. 1991); *Davis Enterprises* v. *E.P.A.,* 877 F.2d 1181 (3rd Cir. 1989); *Boron Oil Company* v. *Downie,* 873 F.2d 67 (4th Cir. 1989); *Swett* versus *Schenk,* 792 F.2d 1447 (9th Cir. 1986).

Moreover, subpoenas by State, territorial or Tribal courts, and legislative or administrative bodies, which attempt to assert jurisdiction over Federal agencies and their employees, are inconsistent with the Supremacy Clause of the U.S. Constitution. A Federal regulation, such as this one prohibiting compliance with such subpoenas, is consistent with the Supremacy Clause. *See McCulloch* v. *Maryland,* 7 U.S. (4 Wheat.) 316 (1819); *Houston Business Journal, Inc.* v. *Office of the Comptroller of the Currency,* 86 F.3d 1208 (D.C. Cir. 1996); *Giza* v. *Secretary of HEW,* 628 F.2d 748 (1st Cir. 1980); *United States* v. *McLeod,* 385 F.2d 734 (5th Cir. 1967). Accordingly, this regulation restricts a CSB employee from complying with subpoenas from State, territorial or Tribal courts, and legislative or administrative bodies without the approval of the General Counsel of the CSB.

In addition, this regulation describes procedures by which the CSB will make its employees and records available in response to subpoenas in Federal court civil proceedings in which the United States is not a party. In the event that the CSB or its Office of General Counsel fails to reach an agreement regarding the proper scope of a subpoena, the Office of General Counsel will coordinate with the Department of Justice to file appropriate motions, including motions to quash or for a protective order.

This regulation does not apply to congressional proceedings. This regulation also does not apply to Federal court civil proceedings in which the United States is a party, because the Department of Justice is already representing the CSB's interests and may file appropriate protective motions under the Federal Rules of Civil Procedure. This regulation likewise does not apply to either Freedom of Information Act or Privacy Act requests.

This regulation applies to information which CSB employees acquire in the course of performing official duties, to production of records in CSB files, and to testimony concerning such records. It is recognized that employees may, on their own time or while in an approved leave status, appear as private citizens in proceedings in which CSB policies and programs are not at issue. This regulation does not restrict such activities.

Finally, the CSB is sometimes asked to authenticate copies of official records for purposes of admissibility under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44, or comparable State or Tribal law. Since official actions and policies can best be proved by CSB records, and since this regulation provides that it is generally inappropriate for employees to appear as witnesses to discuss the background of CSB policies and action in private litigation, this regulation provides that the CSB will authenticate copies of CSB records upon request.

Because this regulation establishes internal policy for CSB employees, the Administrative Procedure Act does not require that it be published as a proposed regulation for notice and public comment. 5 U.S.C. 553(a)(2). This regulation provides immediate clarifying guidance on how CSB employee testimony and CSB records may be obtained. As such, the CSB finds that good cause exists for making the regulation effective immediately upon publication. 5 U.S.C. 553(b)(3)(B).

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

This regulation is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This regulation will not have an effect of $100 million or more on the economy. This regulation regulates how and when CSB employees and documents may be provided in certain situations. As such, it 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.

(2) This regulation will not create a serious inconsistency or interfere with an action taken or planned by another agency.

(3) This regulation does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This regulation is consistent with well-established constitutional and statutory principles and does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by adopting it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation merely regulates how and when CSB employees may testify and that documents may be provided in certain situations.

Small Business Regulatory Enforcement Fairness Act

This regulation is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this regulation only regulates how and when CSB employees may testify and that CSB documents may be provided in certain situations, this regulation:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation or

the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This regulation does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This regulation does not have a significant or unique effect on State, local or tribal governments or the private sector because this regulation only regulates how and when CSB employees may testify and that CSB documents may be provided in certain situations. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this regulation does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 13132)

The CSB has determined that this regulation conforms to the Federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of State and Tribal authority conflicts with the exercise of Federal authority under the U.S. Constitution's Supremacy Clause and Federal statute. This regulation is, however, restricted to the minimum level necessary to achieve the objectives of 5 U.S.C. 301, pursuant to which this regulation is promulgated.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the CSB has determined that this regulation does not unduly burden the judicial system, under *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), and does meet the requirements of section 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

National Environmental Policy Act (NEPA)

This regulation does not constitute a major Federal action significantly affecting the quality of the human environment under NEPA, 42 U.S.C. 4321 *et seq.* A detailed statement under the NEPA is not required.

Dated: March 21, 2001.

Christopher W. Warner,

General Counsel.

List of Subjects

40 CFR Part 1611

Administrative practice and procedure, Freedom of information, Government employees, Investigations, Testimony of employees.

40 CFR Part 1612

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board adds a new 40 CFR part 1611 and part 1612 as follows:

PART 1611—TESTIMONY BY EMPLOYEES IN LEGAL PROCEEDINGS

Sec.

Authority: 5 U.S.C. 301, 42 U.S.C. 7412(r)(6)(G).

§ 1611.1 General.

(a) This part prescribes policies and procedures regarding the testimony of employees of the Chemical Safety and Hazard Investigation Board (CSB) in suits or actions for damages and criminal proceedings arising out of chemical incidents when such testimony is in an official capacity and arises out of or is related to an incident investigation. The purpose of this part is to ensure that the time of CSB employees is used only for official purposes, to avoid embroiling the CSB in controversial issues that are not related to its duties, to avoid spending public funds for non-CSB purposes, to preserve the impartiality of the CSB, and to prohibit the discovery of opinion testimony.

(b) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States is a party;

(3) Federal administrative proceedings;

(4) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the CSB. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the CSB.

(c) This part only provides guidance for the internal operations of the CSB, and neither creates nor is intended to create any enforceable right or benefit against the United States.

§ 1611.2 Definitions.

CSB incident report means the report containing the CSB's determinations, including the probable cause of an incident, issued either as a narrative report or in a computer format. Pursuant to 42 U.S.C. 7412(r)(6)(G), no part of the conclusions, findings or recommendations of the CSB relating to an accidental release or the investigation thereof, may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report.

§ 1611.3 Scope of permissible testimony.

(a) The statute creating the CSB, 42 U.S.C. 7412(r)(6)(G), precludes the use or admission into evidence of CSB investigative reports in any suit or action for damages arising from such incidents. This provision would be undermined if expert opinion testimony of CSB employees, which may be reflected in the views of the CSB expressed in its reports, were admitted in evidence or used in litigation arising out of an incident. The CSB relies heavily upon its investigators' opinions in its deliberations. Furthermore, the use of CSB employees as experts to give opinion testimony would impose a significant administrative burden on the CSB's investigative staff.

(b) For the reasons stated in paragraph (a) of this section and § 1611.1, CSB employees may only testify as to the factual information they obtained during the course of an investigation. However, they shall decline to testify regarding matters beyond the scope of their investigation, and they shall not give any expert or opinion testimony.

(c) CSB employees may testify about the firsthand information they obtained during an investigation that is not reasonably available elsewhere, including their own factual observations. Consistent with the principles cited in § 1611.1 and this

section, current CSB employees are not authorized to testify regarding other employee's observations or reports, or other types of CSB documents, including but not limited to safety recommendations, safety studies, safety proposals, safety accomplishments, reports labeled studies, and analysis reports, as they contain staff analysis and/or CSB conclusions.

(d) Consistent with 42 U.S.C. 7412(r)(6)(G), a CSB employee may not use the CSB's investigation report for any purpose during his testimony.

(e) No employee may testify in any matter absent advance approval by the General Counsel as provided in this part.

§ 1611.4 Manner in which testimony is given in civil litigation.

(a) Testimony of CSB employees with unique, firsthand information may be made available for use in civil actions or civil suits for damages arising out of incidents through depositions or written interrogatories. CSB employees are not permitted to appear and testify in court in such actions.

(b) Normally, depositions will be taken and interrogatories answered at the CSB's headquarters in Washington, DC, and at a time arranged with the employee reasonably fixed to avoid substantial interference with the performance of his or her duties.

(c) CSB employees are authorized to testify only once in connection with any investigation they have made of an incident. Consequently, when more than one civil lawsuit arises as a result of an incident, it shall be the duty of counsel seeking the employee's deposition to ascertain the identity of all parties to the multiple lawsuits and their counsel, and to advise them of the fact that a deposition has been granted, so that all interested parties may be afforded the opportunity to participate therein.

(d) Upon completion of the deposition of a CSB employee, the original of the transcript will be provided to the deponent for signature and correction, which the CSB does not waive. A copy of the transcript of the testimony and any videotape shall be furnished, at the expense of the party requesting the deposition, to the CSB's General Counsel at Washington, DC headquarters for the CSB's files.

(e) If CSB employees are required to travel to testify, under the relevant substantive and procedural laws and regulations the party requesting the testimony must pay for the costs, including travel expenses. Costs must be paid by check or money order payable to the Chemical Safety and Hazard Investigation Board.

§ 1611.5 Request for testimony in civil litigation.

(a) A written request for testimony by deposition or interrogatories of a CSB employee relating to an incident shall be addressed to the General Counsel, who may approve or deny the request consistent with this part. Such request shall set forth the title of the civil case, the court, the date and place of the incident, the reasons for desiring the testimony, and a showing that the information desired is not reasonably available from other sources.

(b) Where testimony is sought in connection with civil litigation, the General Counsel shall not approve it until the CSB's investigation report is issued.

(c) The General Counsel shall attach to the approval of any deposition such reasonable conditions as may be deemed appropriate in order that the testimony will be consistent with § 1611.1, will be limited to the matters delineated in § 1611.3, will not interfere with the performance of the duties of the employee as set forth in § 1611.4, and will otherwise conform to the policies of this part.

(d) A subpoena shall not be served upon a CSB employee in connection with the taking of a deposition in civil litigation.

§ 1611.6 Testimony of former CSB employees.

It is not necessary to request CSB approval for testimony of a former CSB employee, nor is such testimony limited to depositions. However, the scope of permissible testimony continues to be constrained by all the limitations set forth in § 1611.3 and § 1611.4.

§ 1611.7 Testimony by current CSB employees regarding prior activity.

Any testimony regarding any incident within the CSB's jurisdiction, or any expert testimony arising from employment prior to CSB service is prohibited absent approval by the General Counsel. Approval shall only be given if testimony will not violate § 1611.1 and § 1611.3, and is subject to whatever conditions the General Counsel finds necessary to promote the purposes of this part as set forth in § 1611.1 and § 1611.3.

§ 1611.8 Procedure in the event of a subpoena in civil litigation.

(a) If the CSB employee has received a subpoena to appear and testify in connection with civil litigation, a request for his deposition shall not be approved until the subpoena has been withdrawn.

(b) Upon receipt of a subpoena, the employee shall immediately notify the General Counsel and provide all information requested by the General Counsel.

(c) The General Counsel shall determine the course of action to be taken and will so advise the employee.

§ 1611.9 Testimony in Federal, State, or local criminal investigations and other proceedings.

(a) As with civil litigation, the CSB prefers that testimony be taken by deposition if court rules permit, and that testimony await the issuance of the investigation report. The CSB recognizes, however, that in the case of coroner's inquests and grand jury proceedings this may not be possible. The CSB encourages those seeking testimony of CSB employees to contact the General Counsel as soon as such testimony is being considered. Whenever the intent to seek such testimony is communicated to the employee, he shall immediately notify the General Counsel.

(b) In any case, CSB employees are prohibited from testifying in any civil, criminal, or other matter, either in person or by deposition or interrogatories, absent advance approval of the General Counsel.

(c) If permission to testify by deposition or in person is granted, testimony shall be limited as set forth in § 1611.3. Only factual testimony is authorized; no expert or opinion testimony shall be given.

§ 1611.10 Obtaining CSB investigation reports and supporting information.

It is the responsibility of the individual requesting testimony to obtain desired documents. There are a number of ways to obtain CSB investigation reports, and accompanying investigation docket files. The rules at part 1612 of this chapter explain CSB procedures for production of records in legal proceedings, and the CSB's Freedom of Information Act rules at part 1601 of this chapter explain CSB procedures for producing documents more generally. See also the information available on the CSB web site, at www.csb.gov. You may also call the CSB Office of General Counsel, at (202) 261–7600. Documents will not be supplied by witnesses at depositions, nor will copying services be provided by deponents.

PART 1612—PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.

Authority: 5 U.S.C. 301, 42 U.S.C. 7412(r)(6)(G).

§ 1612.1 Purpose and scope.

(a) This part sets forth procedures to be followed when requesting material for use in legal proceedings (including administrative proceedings) in which the Chemical Safety and Hazard Investigation Board (CSB) is not a party, and procedures to be followed by the employee upon receipt of a subpoena, order, or other demand (collectively referred to here as a demand) for such material by a court or other competent authority or by a private litigant. *Material,* as used in this part, means any type of physical or documentary evidence, including but not limited to paper documents, electronic media, videotapes, audiotapes, etc.

(b) The purposes of this part are to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the possibility of involving the CSB in controversial issues not related to its mission;

(3) Maintain the impartiality of the CSB among private litigants;

(4) Avoid spending the time and money of the United States for private purposes; and

(5) To protect confidential, sensitive information, and the deliberative processes of the CSB.

§ 1612.2 Applicability.

This part applies to requests to produce material concerning information acquired in the course of performing official duties or because of the employee's official status. Specifically, this part applies to requests for: material contained in CSB files; and any information or material acquired by an employee of the CSB in the performance of official duties or as a result of the employee's status. Two sets of procedures are here established, dependent on the type of material sought. Rules governing requests for employee testimony, as opposed to material production, can be found at part 1611 of this chapter. Document production shall not accompany employee testimony, absent compliance with this part and General Counsel approval.

§ 1612.3 Published reports and material contained in the public incident investigation dockets.

(a) Demands for published investigation reports should be directed to the Office of Congressional and Public Affairs, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037. Demands for material contained in the CSB's official public docket files of its incident investigations shall be submitted, in writing, to CSB Records Officer, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037. For information regarding the types of documents routinely issued by the CSB, see part 1601 of this chapter.

(b) No subpoena shall be issued to obtain materials subject to this section, and any subpoena issued shall be required to be withdrawn prior to release of the requested information. Payment of reproduction fees may be required in advance.

§ 1612.4 Requests for authentication or certification of records.

The CSB may authenticate or certify records to facilitate their use as evidence. Requests for certified copies should be made to the General Counsel at least 30 days before the date they will be needed. The CSB may charge a certification fee of $5.00 per document.

§ 1612.5 Other material.

(a) *Production prohibited unless approved.* Except in the case of the material referenced in § 1612.3, no employee or former employee of the CSB shall, in response to a demand of a private litigant, court, or other authority, produce any material contained in the files of the CSB (whether or not agency records under 5 U.S.C. 552) or produce any material acquired as part of the performance of the person's official duties or because of the person's official status, without the prior written approval of the General Counsel.

(b) *Procedures to be followed for the production of material under this section.*

(1) All demands for material shall be submitted to the General Counsel at CSB headquarters, 2175 K Street, NW., Suite 400, Washington, DC 20037. If an employee receives a demand, he shall forward it immediately to the General Counsel.

(2) Each demand must contain an affidavit by the party seeking the material or his attorney setting forth the material sought and its relevance to the proceeding, and containing a certification, with support, that the information is not available from other sources, including CSB materials described in § 1612.3 and part 1601 of this chapter.

(3) In the absence of General Counsel approval of a demand, the employee is not authorized to comply with the demand.

(4) The General Counsel shall advise the requester of approval or denial of the demand, and may attach whatever conditions to approval considered appropriate or necessary to promote the purposes of this part. The General Counsel may also permit exceptions to any requirement in this part when necessary to prevent a miscarriage of justice, or when the exception is in the best interests of the CSB and/or the United States.

[FR Doc. 01–7898 Filed 3–29–01; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 082900C]

RIN 0648–AN85

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2000-2001 Catch Specifications for Gulf Group King Mackerel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS issues this final rule, applicable to the fishery for Gulf group king mackerel, to reduce the annual total allowable catch (TAC), reinstate a 2–fish per person daily bag limit for captain and crew of for-hire vessels (charter vessels and headboats), and revise the commercial trip limit applicable within the Florida east coast subzone (Miami-Dade County, FL through Volusia County, FL) to increase its flexibility. The intended effect of this final rule is to protect the Gulf group king mackerel stock from overfishing while still

allowing catches by the commercial and recreational fisheries.

DATES: This final rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and was approved by NMFS and implemented by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Gulf of Mexico Fishery Management Council (Gulf Council) and South Atlantic Fishery Management Council (South Atlantic Council) recommended, and NMFS published, a proposed rule (65 FR 63837, October 25, 2000) for Gulf group king mackerel to reduce the TAC, reinstate a 2–fish per person daily bag limit for captain and crew of for-hire vessels (charter vessels and headboats), and revise the commercial trip limit applicable within the Florida east coast subzone (Miami-Dade County, FL through Volusia County, FL) to increase its flexibility. The proposed rule described the need and rationale for these measures.

Comments and Responses

The following are the comments received on the proposed rule and NMFS' responses.

Comment 1: One commenter supported the revision of the trip limit for Gulf group king mackerel in the Florida east coast subzone.

Response: NMFS agrees that the more flexible trip limit system will allow fishermen a greater opportunity to meet their quota, while maintaining economic stability in the fishery for the majority of the season.

Comment 2: One commenter opposed the proposed TAC of 10.2 million lb (4.6 million kg), stating that a TAC of more than 10 million lb (4.5 million kg) violates the Gulf Council's maximum fishing mortality threshold (MFMT) for Gulf group king mackerel. The commenter additionally urged NMFS to require the Gulf Council to establish appropriate biomass estimates for maximum sustainable yield (MSY) and optimum yield (OY) so that a minimum stock size threshold (MSST) can be established, and that NMFS require the Gulf Council to pick a level of risk, as identified in the Mackerel Stock Assessment Panel (MSAP) report, associated with MFMT and MSST.

Response: In setting a TAC of 10.2 million lb (4.6 million kg) for Gulf group king mackerel, the Gulf Council considered the comments of its MSAP, Socioeconomic Panel, Scientific and Statistical Committee, and Mackerel Advisory Panel as well as public testimony, and legal requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act. Currently, the FMP's OY target for stock rebuilding and the MFMT are equivalent parameters—a fishing mortality rate that would produce a 30–percent static spawning potential ratio.

Based on the FMP's currently established OY target, the MSAP calculated a range of annual allowable biological catch (ABC) of 8.2 to 12.8 million lb (3.7 to 5.8 million kg). A TAC of 10.2 million lb (4.6 million kg) represents the median of the ABC range. The median value has a 50-percent chance of not exceeding the fishing mortality that would allow the stock to reach the current OY target, and it has a 50–percent chance of not exceeding MFMT. Therefore, the TAC established by this final rule is consistent with the Sustainable Fisheries Act.

NMFS continues to work cooperatively with the Gulf Council to develop better estimates of biomass-based thresholds and targets that can be used to monitor the status of the stock of Gulf group king mackerel. Nevertheless, development of new or alternative stock threshold and target parameters is beyond the scope of this rule for annual catch specifications as submitted by the Gulf and South Atlantic Councils. Under provisions of the Magnuson-Stevens Act, NMFS can only approve, partially approve, or disapprove proposed actions submitted by the Gulf and South Atlantic Councils for agency review, approval, and implementation. NMFS cannot substitute an alternative action of its own for one of those actions submitted by the Councils.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. Only one comment was received regarding the economic impact of the rule; that comment supported the more flexible trip limit provided by the rule. Because the basis for the certification has not changed, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 27, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2.

* * * * *

3. In § 622.42, paragraph (c)(1)(i) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) *Gulf migratory group*. The quota for the Gulf migratory group of king mackerel is 3.26 million lb (1.48 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) Eastern zone—2.25 million lb (1.02 million kg), which is further divided into quotas as follows:

(*1*) Florida east coast subzone--1,040,625 lb (472,020 kg).

(*2*) Florida west coast subzone—(*i*) *Southern*—1,040,625 lb (472,020 kg), which is further divided into a quota of 520,312 lb (236,010 kg) for vessels fishing with hook-and-line and a quota of 520,312 lb (236,010 kg) for vessels fishing with run-around gillnets.

(*ii*) Northern—168,750 lb (76,544 kg).

(*3*) Description of Florida subzones. The Florida east coast subzone is that part of the eastern zone north of 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary. The Florida west coast

subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat., a line directly west from the Lee/Collier County, FL, boundary (i.e., the area off Collier and Monroe Counties). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. and 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary (i.e., off Collier County). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. and 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

(B) Western zone—1.01 million lb (0.46 million kg).

* * * * *

4. In § 622.44, paragraphs (a)(2)(i) and (d)(4)(i) are revised to read as follows:

§ 622.44 Commercial trip limits.

(a) * * *

(2) * * *

(i) *Eastern zone–Florida east coast subzone*. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board at any time or landed in a day from a vessel with a commercial permit for king mackerel as required under § 622.4(a)(2)(iii) as follows:

(A) From November 1 through January 31—not to exceed 50 fish.

(B) Beginning on February 1 and continuing through March 31—

(*1*) If 75 percent or more of the Florida east coast subzone quota as specified in § 622.42(c)(1)(i)(A)(1) has been taken—not to exceed 50 fish.

(*2*) If less than 75 percent of the Florida east coast subzone quota as specified in § 622.42(c)(1)(i)(A)(1) has been taken—not to exceed 75 fish.

* * * * *

(d) * * *

(4) * * *

(i) May not possess red snapper in or from the Gulf in excess of the appropriate vessel trip limit, as specified in paragraphs (d)(1) through (d)(3) of this section.

* * * * *

[FR Doc. 01–7944 Filed 3–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010319072–1072–01; I.D. 110600A]

RIN 0648–A076

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection; Shark Drift Gillnet Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues an interim final rule that requires the possession and use of line clippers and dipnets on board all pelagic longline vessels that have been issued Federal fisheries permits for Atlantic highly migratory species (HMS); requires specific methods for handling, resuscitating, and releasing sea turtles; reduces the level of observer coverage in the Atlantic shark drift gillnet fishery from 100 percent year-round to 100 percent during the right whale calving season and a statistically significant level during the rest of the year; and modifies the definition of pelagic longline gear to remove the high-flyer component.

The gear and sea turtle handling requirements will minimize the mortality of, or injury to, sea turtles that have been hooked or entangled by pelagic longline gear. The reduction in observer coverage requirements in the shark drift gillnet fishery reduces costs to industry while maintaining statistically valid levels of coverage. The change in the definition of pelagic longline gear is necessary for enforcement of gear prohibitions in closed areas.

DATES: Effective beginning 12:01 a.m. local time on April 1, 2001, except for amendments to 635.21(c)(5) and 635.71(a)(33) and (a)(34) which are effective beginning 12:01 a.m. local time on April 10, 2001. Comments on this interim final rule will be accepted through April 30, 2001.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301–713–1917. Comments will not be accepted if submitted via email or the Internet.

Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Christopher Rogers.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Tyson Kade at 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Atlantic shark drift gillnet fishery is managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks is implemented by regulations at 50 CFR part 635.

Pelagic Longline Fishery

Pelagic longline gear is one of the major commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., through gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

Sea Turtle Bycatch Reduction

Observer data and vessel logbook data indicate that pelagic longline fishing for Atlantic swordfish and tunas results in the bycatch of protected species, including threatened and endangered sea turtles. In certain times and areas, the Atlantic pelagic longline fishery has relatively high rates of sea turtle bycatch, with associated mortality. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries of sea turtles taken by pelagic longline gear.

In its most recent Biological Opinion (BO) on Atlantic HMS fisheries, completed June 30, 2000, NMFS concluded that operation of the pelagic longline fishery jeopardizes the continued existence of threatened loggerhead and endangered leatherback sea turtles. However, NMFS thereafter concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles were needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS re-initiated consultation. NMFS anticipates completing the consultation and issuing a new BO in March 2001. In the interim,

NMFS issued an emergency rule (65 FR 60889, October 13, 2000) to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery in the short-term. The emergency rule will expire on April 9, 2001, unless it is extended. This interim final rule adopts the requirements in the emergency rule regarding the possession and use of dipnets and line clippers to facilitate the release of sea turtles with a minimum of injury.

Gear and Handling Requirements

Under the emergency rule, all Atlantic pelagic longline vessels that have been issued Federal HMS permits are required to carry on board dipnets and line clippers that meet NMFS design and performance standards and comply with requirements for the use of these dipnets and line clippers for the handling of incidentally caught sea turtles. Technical descriptions of the dipnet and line clipper gear are available from NMFS (see **ADDRESSES**) and are also included in this interim final rule. While specific line clipper devices are not available in the commercial market, line clippers meeting the minimum design standards of this interim final rule may be fashioned from readily available tools and components. Consequently, line clippers may be fabricated or obtained and put into use in the fishery at low cost. NMFS' minimum design standards are intended to allow users flexibility in adapting line clippers and dipnets for optimum use on board individual vessels. The emergency rule also reiterates existing resuscitation and release requirements.

NMFS is adopting these requirements because dipnets and line clippers better enable the vessel captain, crew, and observers to disengage sea turtles hooked or entangled in their gear. All sea turtles brought on board for dehooking and/or disentanglement must be handled in a manner that prevents injury and promotes post-release survival. Active and comatose sea turtles should be brought on board immediately and handled in accordance with the procedures specified in 50 CFR 223.206(d)(1). If a sea turtle is too large or hooked in a manner that prevents safe boarding, the line clippers must be used to remove as much line as possible prior to releasing the animal.

Definition of Pelagic Longline Gear

The regulatory text for the final rule implementing the DeSoto Canyon, East Florida Coast, and Charleston Bump closures (65 FR 47214, August 1, 2000) defines pelagic longline gear in a manner designed to avoid applying the vessel monitoring system requirement and fishing restrictions to vessels fishing with bottom longline gear. The regulations define pelagic longline gear as a longline that is suspended by floats in the water column and that is not fixed to or in contact with the ocean bottom. As defined, pelagic longline gear consists of five components: a power-operated longline hauler, a mainline, high-flyers, floats capable of supporting the length of the mainline, and leaders (gangions) with hooks. Those regulations further state that the removal of any one of these components from a vessel constitutes the removal of pelagic longline gear. Vessel operators removing one or all of the listed components would be eligible to fish with other gear in the closed areas and would not be required to operate a VMS while at sea. Since publication of the time and area requirements, NMFS has become aware that it is possible to use a longline that is suspended by floats without the use of high-flyers. Operators of fishing vessels could potentially utilize the remainder of the defined components of pelagic longline gear to target tunas, swordfish and sharks in the closed areas, thereby undermining the objective of bycatch reduction and reducing the benefits of the closures. Removal of the term ''high-flyer'' from the list of components constituting pelagic longline gear would avoid this potential problem. NMFS proposed this regulatory change among other changes in a notice of proposed rulemaking published December 7, 2000 (65 FR 76601). During the comment period, NMFS received one comment in support of this change and no objections or concerns were raised. Therefore, NMFS has included this change in this interim final rule. This definition change will have no measurable impact on the environment or fishermen, since the intent of the closures is to prohibit all pelagic longline fishing by vessels with HMS fishing permits when the areas are closed. The environmental, economic, and social impacts associated with the area closures were previously considered and are discussed in detail in the HMS FMP and Final Supplemental Environmental Impact Statement issued for the August 1, 2000, final rule.

Atlantic Shark Drift Gillnet Fishery

Drift gillnet fishing for sharks occurs primarily in the waters off the coasts of Georgia and Florida. The fishery is comprised of 4 to 12 vessels that engage in nearshore fishing trips that typically last less than 13 hours. Legislation in South Carolina, Georgia, and Florida has prohibited the use of commercial gillnets in state waters, causing these vessels to operate further offshore in waters under Federal jurisdiction. Historically, eight shark species made up over 99 percent of sharks caught, including: blacknose, Atlantic sharpnose, blacktip, finetooth, scalloped hammerhead, bonnethead, spinner, and great hammerhead.

Shark Drift Gillnet Fishery Observer Coverage

The southeast shark drift gillnet fishery is believed to be responsible for the bycatch of at least one right whale, and has interacted with sea turtles as well as valuable finfish along the Georgia coast for a number of years. The BO issued under section 7 of the Endangered Species Act requires 100-percent observer coverage during the right whale calving season (November 15 to March 31) as well as observer coverage for the rest of the year at a level sufficient to provide a reasonably precise estimate of sea turtle takes. In an effort to improve the estimates of bycatch and bycatch mortality of protected species, juvenile sharks, and other finfish, NMFS established a 100-percent observer requirement in this fishery year-round. Regulations issued on May 28, 1999 (64 FR 29090) prohibited the use of drift gillnet gear in the Atlantic shark fisheries unless a NMFS-approved observer is on board the vessel.

However, recent scientific analysis indicates that a 53-percent coverage rate, rather than 100-percent coverage, is statistically significant and adequate to provide reasonable estimates of sea turtle and marine mammal takes in the shark drift gillnet fishery outside the right whale calving season. The level of observer coverage necessary to maintain statistical significance will be reevaluated annually and adjusted accordingly. Based on this analysis, this interim final rule reduces the observer coverage requirement so that the 100-percent coverage applies from November 15 to March 31, and for the rest of the year vessels will be selected for observer coverage according to a statistically-based sampling plan.

Comment Period

NMFS is accepting comments regarding this interim final rule for 30 days, through April 30, 2001. Comments on the gear requirements were requested in the emergency rule published on October 13, 2000 (65 FR 60889). One comment was received concerning the line clipper specifications that said the line clipper blade should be modified to better cut heavier line. NMFS also received comments concerning the

dipnets and line clippers during the technical gear workshop held in Silver Spring, MD on January 17 and 18, 2001. While many of the comments were positive, it was indicated that better specifications could be developed. NMFS intends to conduct further research to develop more effective specifications, if possible.

Classification

This interim final rule is published under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act. The Assistant Administrator for Fisheries (AA) has determined that these regulations are necessary to reduce, to the extent practicable, the bycatch mortality of sea turtles in the pelagic longline fishery. This interim final rule also reduces the cost to the industry by reducing required observer coverage in the shark drift gillnet fishery to levels that will provide reasonable estimates of sea turtle and marine mammal takes.

NMFS prepared an Environmental Assessment that describes the impact of the interim final rule on the human environment and found that no significant impact would result from the implementation of these measures. NMFS also prepared a Regulatory Impact Review that assesses the economic costs and benefits of this action. Requiring the use of line clippers and dipnets to release hooked turtles is not expected to increase fishing costs substantially and will not negatively impact small business entities. In a similar rule for the fisheries in the Western Pacific, NMFS estimated the total cost for the materials to fabricate and/or purchase line clippers and dipnets to be $250 (65 FR 16347, March 28, 2000). Moreover, affected vessels that complied with the emergency rule would already have this gear.

The reduction in the level of observer coverage in the shark drift gillnet fishery is based on recent scientific analysis that indicates that a 53-percent coverage rate is adequate to provide reasonable estimates of sea turtle and marine mammal takes in this fishery outside the right whale calving season. The level of appropriate coverage will be reassessed each year to maintain statistical significance. Reduced observer coverage will result in reductions in industry costs associated with carrying observers on vessels in this fishery.

Because no general notice of proposed rulemaking is required to be published for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act are not applicable and no Regulatory Flexibility Analysis was prepared.

This interim final rule has been determined to be not significant for the purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. Notice and opportunity to comment was provided on the emergency rule (65 FR 60990, October 13, 2000) that first implemented the dipnet and line clipper requirement. For the change in the definition of pelagic longline gear, comments were solicited in a notice of proposed rulemaking (65 FR 76601, December 7, 2000). It would be contrary to the public interest to provide additional prior notice and opportunity for comment because it would prevent the agency from implementing this action in a timely manner to both reduce the post-release mortality of sea turtles incidentally captured in the pelagic longline fishery and prevent pelagic longline fishing in closed areas.

Furthermore, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this interim final rule for 30 days. Such delay would also cause a lapse in the gear requirements and handling techniques that reduce the post-release mortality of sea turtles incidentally captured in the pelagic longline fishery and undermine the effectiveness of the closed areas, contrary to the public good. NMFS believes there is good cause for waiving the notice and comment period and the delay in effectiveness because the reduction in the level of observer coverage in the Atlantic shark drift gillnet fishery relieves current restrictions.

NMFS has determined that this interim final rule is consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: March 26, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.7, paragraph (d) is revised to read as follows:

§ 635.7 At-sea observer coverage.

* * * * *

(d) *Assignment of observers.* Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel, so long as the waiver is consistent with other applicable laws. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard.

* * * * *

3. In § 635.21, in paragraph (c) introductory text, the first sentence is revised and a new paragraph (c)(5) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) *Pelagic longlines.* For purposes of this part, a vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks are on board. * * *

* * * * *

(5) The operator of a vessel required to be permitted under this part and that has pelagic longline gear on board must undertake the following sea turtle bycatch mitigation measures:

(i) *Possession and use of required mitigation gear.* Line clippers meeting minimum design standards as specified in paragraph (c)(5)(i)(A) of this section and dipnets meeting minimum standards prescribed in paragraph (c)(5)(i)(B) of this section must be carried on board and must be used to disengage any hooked or entangled sea turtles in accordance with the requirements specified in paragraph (c)(5)(ii) of this section.

(A) *Line clippers.* Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum

design standards for line clippers. The Arceneaux line clipper is a model that meets these minimum design standards and may be fabricated from readily available and low-cost materials (65 FR 16347, March 28, 2000). The minimum design standards for line clippers are as follows:

(*1*) *A protected cutting blade.* The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(*2*) *Cutting blade edge.* The blade must be able to cut 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(*3*) *An extended reach holder for the cutting blade.* The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(*4*) *Secure fastener.* The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(B) *Dipnets.* Dipnets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that prevents injury and trauma to sea turtles. The minimum design standards for dipnets are as follows:

(*1*) *Extended reach handle.* The dipnet must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(*2*) *Size of dipnet.* The dipnet must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may not exceed 3 inches × 3 inches (7.62 cm × 7.62 cm).

(ii) *Handling requirements.* (A) The dipnets required by this paragraph should be used to facilitate access and safe handling of sea turtles where feasible. The line clippers must be used to disentangle sea turtles from fishing gear or to cut fishing line as close as possible to a hook that cannot be removed without causing further injury.

(B) When practicable, active and comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in § 223.206(d)(1).

(C) If a sea turtle is too large or hooked in a manner that precludes safe boarding without causing further damage or injury to the turtle, line clippers described in paragraph (c)(5)(i)(A) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

* * * * *

4. In § 635.71, paragraphs (a)(33) and (a)(34) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic longline gear on board without carrying a dipnet and line clipper as specified at § 635.21(c)(5)(i).

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21(c)(5)(ii).

* * * * *

[FR Doc. 01–7943 Filed 3–29–01; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000831250–0250–01; 031901D]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Closure of Fishery for Pacific Mackerel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of fishery for Pacific mackerel.

SUMMARY: NMFS announces the closure of the fishery for Pacific mackerel in the exclusive economic zone off the Pacific coast at 12 a.m. on March 27, 2001. The Coastal Pelagic Species Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on a formula in the FMP and to close the fishery when the harvest guideline is reached. The harvest guideline of 20,740 metric tons (mt) has been reached. Following this date no more than 1 mt of Pacific mackerel may be landed from any fishing trip. The effect of this action is to ensure conservation of the Pacific mackerel resource.

DATES: Effective at 12 a.m. on March 27, 2001 through June 30, 2001.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: On September 11, 2000, NMFS announced a harvest guideline for Pacific mackerel in the **Federal Register** (65 FR 54817) of 20,740 mt for the fishing season of July 1, 2000, through June 30, 2001. The harvest guideline was based on an annual biomass estimate and calculated by a formula in the FMP applying information on that portion of the stock in U.S. waters and the required harvest rate above a minimum biomass.

On October 27, 2000, (65 FR 65272, November 1, 2000), the directed fishery for Pacific mackerel was closed and an incidental landing of Pacific mackerel of 20 percent of the total weight of all coastal pelagic species was implemented. Subsequent changes to the incidental landing provision were published on November 17, 2000 (65 FR 69483), and February 22, 2001 (65 FR 11119).

As of March 12, 2001, 20,751 mt of Pacific mackerel has been harvested; therefore, the fishery must be closed.

For the reasons stated here and in accordance with the FMP and its regulations governing closure of the fishery, the fishery for Pacific mackerel will be closed at 12 a.m. on March 27, 2001, after which time no more than 1 mt of any landing may be Pacific mackerel.

Classification

This action is required by 50 CFR 660.509 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 27, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–7932 Filed 3–27–01; 2:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 032601B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 Feet Length Overall and Longer Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 ft (18.3 meters (m)) length overall (LOA) and longer using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2001 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 27, 2001, until 1200 hrs, A.l.t., June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2001 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the BSAI was established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) as a directed fishing allowance of 159 metric tons. See § 679.20(c)(3)(iii), § 679.20(c)(7), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2001 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 ft (18.3 m) LOA and longer using hook-and-line gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the A season apportionment of the 2001 Pacific cod TAC allocated to catcher vessels using hook-and-line gear constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the A season apportionment of the 2001 Pacific cod TAC allocated to catcher vessels using hook-and-line gear constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 26, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–7933 Filed 3–27–01; 2:54 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 62
Friday, March 30, 2001

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 00N–1269]

RIN 0910–AA94

Requirements on Content and Format of Labeling for Human Prescription Drugs and Biologics; Requirements for Prescription Drug Product Labels; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to June 22, 2001, the comment period for the proposed rule that appeared in the **Federal Register** of December 22, 2000 (65 FR 81082). The proposed rule would, among other things, require that the labeling of new and recently approved prescription drug and biological products include a section containing highlights of prescribing information and a section containing an index to prescribing information. The agency is extending the comment period in response to a request by a group representing pharmaceutical manufacturers. The agency is taking this action to provide interested persons additional time to submit comments on the proposed rule.

DATES: Submit written or electronic comments by June 22, 2001.

ADDRESSES: Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the Internet at http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Nancy M. Ostrove, Center for Drug Evaluation and Research (HFD-42), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828, Ostrove@CDER.FDA.GOV

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 22, 2000 (65 FR 81082), FDA published proposed regulations that would revise the format of prescription drug and biologic labeling to make it more accessible, readable, and user-friendly for health care professionals. Comments on the proposed rule were to be submitted by March 22, 2001. The proposed format provisions would require that drug product labeling (also known as the ''package insert,'' ''direction circular,'' or ''package circular '') be presented in three sections: (1) A section containing highlights of prescribing information, (2) an index section, and (3) a section containing comprehensive prescribing information. The highlights of the prescribing information section would appear first in labeling and would include information that practitioners most commonly refer to and view as most important. Specific headings within this section would also reference the location of more detailed information on a topic. The index section would contain a list of the major and minor subheadings in the comprehensive prescribing information section to assist practitioners in finding specific information of interest to them. The comprehensive prescribing information section would include the detailed information that constitutes current labeling. The proposed rule would reorder and reorganize this information to increase the prominence of important information and make it easier to find. The proposed format changes are based on research FDA conducted with physicians and on comments received from the public in response to a **Federal Register** document issued, and public meeting held, before the proposed rule.

In addition to revising the format of labeling, the proposed rule would make minor changes to its content and establish minimum graphical requirements, including a minimum type size. The proposal would also amend prescription drug labeling requirements for older drugs to require that certain types of statements currently appearing in labeling be removed if they are not sufficiently supported. Finally, the proposal would eliminate certain unnecessary statements that are currently required to appear on prescription drug product labels (i.e., on the immediate container of a drug product) and move other information that is currently required to appear on labels to the labeling (i.e., the package insert).

FDA received a request from the Pharmaceutical Research and Manufacturers of America to extend the comment period an additional 90 days. The request stated that the proposed rule raises significant legal, compliance, and implementation issues for the pharmaceutical industry, and that additional time is necessary to formulate a response. In response to this request, and to provide all interested persons additional time to comment on the proposed format changes and other aspects of the proposed rule, FDA is extending the comment period to June 22, 2001.

II. Comments

Interested persons may by June 22, 2001, submit written or electronic comments regarding the proposed rule. Written comments should be submitted to the Dockets Management Branch (address above). 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 office above between 9 a.m. and 4 p.m., Monday through Friday.

Electronic comments may also be submitted electronically on the Internet at http://www.fda.gov/dockets/ecomments. Once on this Internet site, select ''OON–1269 Labeling for Human Prescription Drug/Biologic Products'' and follow the directions.

Dated: March 23, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–7837 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–007]

RIN 2115–AE47

Drawbridge Operation Regulation; Ouachita River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a temporary change to the regulation governing the operation of the Kansas City Southern Railroad swing span bridge across the Ouachita River, mile 167.1, at Monroe, Ouachita Parish, Louisiana. The temporary rule will allow for the passage of vessels from June 4, 2001, through November 15, 2001 only during the morning hours with proper advanced notification. This temporary rule is issued to facilitate the repairs to the turn span of the bridge. Presently, the draw opens on signal at all times.

DATES: Comments and related material must reach the Coast Guard on or before April 16, 2001.

ADDRESSES: You may mail comments to Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, 504–589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–01–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like confirmation of receipt of your comments, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed temporary rule in view of comments received.

The comment period for this NPRM is only fifteen days, so that we can provide an opportunity for public comment and still promulgate our final rule at least 30 days before the operation schedule change becomes effective.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a public meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place to be announced by notice in the **Federal Register**.

Background and Purpose

The Kansas City Southern Railroad has submitted plans to repair the turn span of the swing span bridge across the Ouachita River, mile 167.1, at Monroe. To facilitate the continued movement of trains across the bridge during the repairs, the railroad plans to remove the swing span and temporarily replace it with a removable span bridge with 70 feet of horizontal clearance. The railroad has requested limited openings during the repair period of May 7, 2001 through November 30, 2001. Frequent need to remove and replace the span will severely limit the railroad's ability to complete the repairs in a timely manner.

Discussions were held between the railroad, its contractor, waterway users, and facility operators to determine the best method of allowing vessels to transit the waterway during the repair period. The discussions centered on the mariner's ability to transit the bridge site on any day if proper notification was given. The railroad only wanted to open the bridge on certain days during the morning hours. Mariners explained that their schedule was not such that they would need to go through the bridge on set days and that the proposed schedule by the railroad may require vessels to wait almost 48 hours for the passage. It was determined that due to the limited number of transits, openings would not be required daily but set days would not be acceptable.

Following the meetings, the group recommended to the Coast Guard that

—The draw need not open for the passage of vessels from 2 a.m. on June 4, 2001 through 2 a.m. on June 6, 2001, and from 2 a.m. on November 12, 2001 until 2 a.m. on November 14, 2001.

—At all other times between June 4, 2001 and November 15, 2001, the draw of the bridge need not open for the passage of vessels, except from 8 a.m. to 11 a.m. daily for those vessels that have provided at least 20-hours notification.

The two 48-hour closures will allow for the removal and replacement of the swing span and placement of the removable span sections of the bridge. Upon establishment of the removable span bridge, mariners will be able to transit the bridge site between the hours of 8 a.m. and 11 a.m. daily provided at least 20-hours notification is given.

Regulatory Evaluation

This proposed temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This proposed temporary rule maintains the movement of vessels while allowing the bridge owner to repair his bridge as expeditiously as possible.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed temporary rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed temporary rule would not have a significant economic impact on a substantial number of small entities.

This proposed temporary rule would affect the following small entities: The owners or operators of vessels intending to transit the Ouachita River at mile 167.1.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

This proposed temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed temporary rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed temporary rule would not impose an unfunded mandate.

Taking of Private Property

This proposed temporary rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed temporary rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this proposed temporary rule is categorically excluded from further environmental documentation. This proposal will change an existing special drawbridge operating regulation promulgated by a Coast Guard Bridge Administration Program action. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 2 a.m. on June 4, 2001 until 6 p.m. on November 15, 2001, in § 117.483, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 117.483 Ouachita river.

* * * * *

(b) The draw of the Kansas City Southern Railroad swing span bridge, mile 167.1, at Monroe, shall operate as follows:

(1) The draw need not open for the passage of vessels from 2 a.m. on June 4, 2001, through 2 a.m. on June 6, 2001, and from 2 a.m. on November 12, 2001, through 2 a.m. on November 14, 2001.

(2) At all other times between June 4, 2001, and November 15, 2001 inclusive, the draw need not open for the passage of vessels, except from 8 a.m. until 11 a.m. daily, the draw shall open for vessels that have provided at least 20-hours notification.

Dated: March 21, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 01–7949 Filed 3–29–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–01–007]

RIN 2115–AE47

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Cape May Canal

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a change to the regulations governing the operation of the Cape May Canal Railroad Bridge at the New Jersey Intracoastal Waterway (ICW), mile 115.1, across Cape May Canal, in Cape May, New Jersey. This proposal would maintain the bridge in the open position, except that it would close for the crossing of trains and the maintenance of the bridge. The proposed change will provide for the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before May 29, 2001.

ADDRESSES: You may mail comments and related material to the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and documents received from the public, as well as documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting related material. If you do so, please include your name and address, identify this rulemaking (CGD05–01–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know it reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public hearing. But you may submit a request for a meeting by writing to Commander (Aowb), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Cape May Canal Railroad Bridge is a swing bridge owned by New Jersey Transit Rail Operations (NJTRO). Under an agreement with NJTRO and Cape May Seashore Lines, Inc. (CMSL), CMSL is responsible for the reactivation of the rail service, maintenance of the accessories of the bridge and its operation of the swing span. From 1983 until June 1999, train service was deactivated and bridge tender service discontinued. The swing span was placed in the full open position for vessels in accordance with 33 CFR 117.41. Upon reactivation of bridge tender service in 1999, the draw was required to return to opening on signal at all times. This requirement is included in the general operation regulations at 33 CFR 117.5.

CMSL is currently providing passenger rail service on the 27-mile long rail lines between Tuckahoe and Cape May, New Jersey. There is no train service in the winter so the bridge is unmanned and placed in the full open position. Tourist train service is provided on weekends only in the spring and fall and seven days a week from mid-June until Labor Day. Train service starts at 10 a.m. and ends at 7:30 p.m. After train hours, the bridge is unmanned and placed in the full open position. During train service hours, the bridge is kept in the full open position for vessels and closes only when a train is scheduled to cross.

This proposal formalizes the current operation of the bridge. The proposed regulations will have less impact on navigation than the general operating regulations.

Discussion of Proposal

The Coast Guard proposes to regulate the Cape May Canal Railroad Bridge, ICW mile 115.1, which currently requires the bridge to open on signal. The Coast Guard proposes to insert this new specific regulation at 33 CFR 117.733(k). The regulation would require the draw to be maintained in the open position, except the draw may close for the crossing of trains and maintenance of the bridge. When the draw is closed, for a train crossing or maintenance, a bridge tender shall be present to open the draw. In addition, any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the determination that the proposed regulation will provide for greater flow of vessel traffic than the general requirements for the use and operation of drawbridges. Under the general requirements the drawbridge is required to open promptly upon signal. This permits the bridge to remain closed and open only after a proper signal. The proposed regulation will require the bridge to remain in the open position, permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This regulation will provide for the reasonable needs of navigation, while reducing the burden on the bridge operator.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels that desire to transit the waterway and homeowners associations representing property owners upstream of the drawbridge.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. The proposed rule will provide for the bridge to remain in the open position, allowing the free flow of vessel traffic. The bridge will close only for the passage of trains and maintenance of the bridge. This proposed regulation will provide for the reasonable needs of navigation.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed regulation does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. The proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C this proposed rule is categorically excluded from further environmental documentation. This proposed rule only involves the operating schedule of an existing drawbridge and will have no impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub.L. 102–587, 106 Stat. 5039.

2. In § 117.733 add a new paragraph (k) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(k) The draw of Cape May Canal Railroad Bridge across Cape May Canal, mile 115.1, at Cape May shall operate as follows:

(1) The draw shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed for a train crossing a bridge tender shall be present to open the draw after the train has cleared the bridge. When the draw is closed for maintenance a bridge tender shall be present to open the draw upon signal.

(2) Train service generally operates as follows (please contact Cape May Seashore Lines for current train schedules):

(i) Winter (generally December through March): In general, there is no train service, therefore the bridge is unmanned and placed in the full open position.

(ii) Spring (generally April through May) and Fall (generally September through November): Generally weekend service only. Friday through Sunday train service starts at 10 a.m. and ends at 7:30 pm. Monday through Thursday the bridge is generally unmanned and placed in the open position.

(iii) Summer Service (generally June through August): Daily train service starting at 10 a.m. and ending at 7:30 p.m.

(3) When a vessel approaches the drawbridge with the draw in the open position, the vessel shall give the opening signal. If no acknowledgement is received within 30 seconds, the vessel may proceed, with caution, through the open draw. When the draw is open and will be closing promptly, the drawbridge will generally signal using sound signals or radio telephone.

(4) Opening of the draw span may be delayed for ten minutes after a signal to open except as provided in § 117.31(b). However, if a train is moving toward the bridge and has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks as soon as possible in order to prevent unnecessary delays in the opening of the draw.

Dated: March 22, 2001.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–7947 Filed 3–29–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–232–0219, FRL–6960–4]

Approval and Promulgation of Ozone Attainment Plan and Finding of Failure To Attain; State of California, San Francisco Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part a state implementation plan (SIP) revision, the 1999 San Francisco Bay Area Ozone Attainment Plan (1999 Plan), submitted by the State of California to EPA to attain the 1-hour ozone national ambient air quality standard (NAAQS) in the San Francisco Bay Area. Specifically, EPA is proposing to approve the baseline emissions inventory, the Reasonable Further Progress (RFP) demonstration, control measure commitments, and contingency measures in the 1999 Plan as meeting the requirements of the Clean Air Act (CAA) applicable to the Bay Area ozone nonattainment area. We are proposing to disapprove the attainment assessment, its associated motor vehicle emissions budgets, and the reasonably available control measure (RACM) demonstration.

If EPA takes a final disapproval action, it will trigger the 18-month clock for mandatory application of sanctions, a 2-year time clock for a federal implementation plan (FIP), and a transportation conformity freeze.

EPA is also proposing to find that the San Francisco Bay Area ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 2000, the attainment deadline set by EPA when the area was designated to nonattainment in 1998. If EPA takes final action on this proposal, the State will be required to submit a new plan no later than 12 months thereafter.

DATES: Comments on the proposed actions must be received on or before May 14, 2001.

ADDRESSES: Comments may be mailed to: Celia Bloomfield, Planning Office, [AIR–2], Air Division, U.S. Environmental Protection Agency,

Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; or to bloomfield.celia@epa.gov.

A copy of this proposed rule and related information are available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air*. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 744–1249 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (415) 744–1249, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; bloomfield.celia@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. 1998 Redesignation to Nonattainment

The San Francisco Bay Area (Bay Area) was originally designated under section 107 of the 1977 CAA as nonattainment for ozone in 1978. Following the 1990 Clean Air Act Amendments, the Bay Area retained its nonattainment designation and was classified as ''moderate'' under section 181 by operation of law. 56 FR 56694 (Nov. 6, 1991). The Bay Area was then redesignated to attainment in 1995 based on then current air quality data (60 FR 27028, May 22, 1995) and subsequently redesignated back to nonattainment with the federal 1-hour ozone standard on July 10, 1998 (63 FR 37258). See 40 CFR 81.305 (1999).[1]

EPA's action in 1998 was prompted by persistent air quality problems in the two years following the redesignation to attainment. Ozone levels exceeded the federal 1-hour ozone standard on 11 days in 1995 and 8 days in 1996. As provided under section 107(d)(3) of the CAA, EPA revised the Bay Area's designation on the basis of those air quality data. The intent of the redesignation was to return healthy air as quickly as possible to the Bay Area.

B. Nonattainment Area Requirements

In an effort to focus on near term air quality gains, EPA set an expedited attainment deadline of November 15, 2000 under CAA section 172(a)(2) in its redesignation action. At that time, EPA believed the Bay Area could attain by that date. EPA also required the Bay Area to submit an attainment plan by June 15, 1999 that addressed the section 172(c) requirements and specifically included a 1995 baseline emissions inventory, an assessment of the emissions reductions needed for attainment, and adopted control measures (or commitments to adopt and implement control measures) sufficient to meet reasonable further progress (RFP) and to attain the 1-hour ozone standard by the attainment deadline. The plan was also required to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable. Finally, the Bay Area was also required to include contingency measures that would take effect automatically should attainment not be achieved by November 15, 2000, and new transportation conformity emissions budgets capping volatile organic compounds (VOC) and nitrogen oxides (NO_X) emissions for ozone consistent with the new attainment plan. 63 FR at 37275–37276. See also CAA section 172(c)(1)–(3), (6)–(7) and (9).

C. Ozone Attainment Plan Submission

On August 13, 1999, the California Air Resources Board (CARB) submitted the 1999 San Francisco Bay Area Ozone Attainment Plan (1999 Plan) to EPA. The attainment plan was submitted as a proposed revision to the California State Implementation Plan (SIP) by CARB on behalf of the Bay Area Air Quality Management District (BAAQMD), the Metropolitan Transportation Commission (MTC), and the Association of Bay Area Governments (ABAG).

EPA found the submittal complete in a letter to the State of California on October 28, 1999.[2] EPA determined that the submittal met the criteria for completeness as set forth in 40 CFR part 51, appendix V.[3]

II. Evaluation of the State's Submittal

EPA evaluated the Bay Area ozone plan according to the general nonattainment plan requirements contained in section 172(c) of the CAA. Section 172(c) formed the basis for the nonattainment plan requirements set out in the final redesignation rulemaking. For a more complete discussion of section 172(c) as it applies to the Bay Area ozone plan, please refer to the proposed redesignation rulemaking, 62 FR 66580.

A. Baseline Emissions Inventory

CAA section 172(c)(3) requires nonattainment plans to include a comprehensive, accurate and current inventory of actual emissions from all sources. The purpose of this inventory is to provide a benchmark for attainment planning, and it is often referred to as a baseline inventory. To satisfy this requirement, EPA stated in the final redesignation rulemaking that the Bay Area must submit a 1995 emissions inventory for VOC and NO_X (63 FR 37274).

EPA has determined that the 1995 baseline emissions inventory contained in section 4 of the 1999 Plan satisfies the requirements of CAA section 172(c)(3). It is a seasonal inventory (typical summer day) representing emissions when ozone levels are at their highest. It is based on actual emissions in 1995 and addresses the full spectrum of stationary, mobile and miscellaneous

[1] As a moderate nonattainment area, the Bay Area was subject to the moderate classification provisions of title I, part D, subpart 2 of the CAA that were added as part of the 1990 Amendments. In redesignating the Bay Area back to nonattainment, EPA looked at the longstanding general nonattainment provisions of subpart 1 of the CAA as well as the subpart 2 provisions. EPA concluded, based on a number of legal and policy reasons described at length in the proposed and final redesignation actions, that the Act is best interpreted as placing the Bay Area under subpart 1 upon redesignation back to nonattainment. Thus the Bay Area was not classified under section 181 upon redesignation. (See 62 FR 66578, December 19, 1997; 63 FR 3725, July 10, 1998.)

[2] Letter from David P. Howekamp, Director, Air Division, U.S. EPA, to Michael Kenny, Executive Officer, California Air Resources Board, dated October 28, 1999.

[3] EPA adopted the completeness criteria pursuant to section 110(k)(1)(A) of the CAA on February 16, 1990 (55 FR 5830), and revised the criteria on August 26, 1991 (56 FR 42216).

sources of VOC and NO_X in the Bay Area. The inventory also takes rule effectiveness into account. Therefore, EPA proposes to approve the inventory as meeting the requirements of section 172(c)(3).

B. Attainment Assessment

As required by section 172(c)(1) and our final redesignation rulemaking, the plan for the Bay Area was required to provide for attainment of the ozone NAAQS by November 15, 2000. As EPA recognized at the time of the redesignation, there had been a sufficient number of exceedances of the standard in 1998 such that it was not possible for the Bay Area to attain the 1-hour standard based on data for the three year period 1998–2000.[4] However, EPA interprets the attainment planning requirement to mean that a State must show that it will have ''clean data'' as of the attainment year, such that the area would be eligible for an attainment date extension under section 181(a)(5), if applicable, or section 172(a)(2)(C). In the redesignation action for the Bay Area, EPA indicated that for the Bay Area this meant that the attainment assessment must show that there would be no more than one exceedance at any monitor in the attainment year (63 FR 37273, July 10, 1998).

The specific attainment assessment requirement set out in EPA's redesignation rulemaking was as follows: ''[a]ssessment, employing available data and technical analyses, of the level of emissions reductions needed to attain the current 1-hour ozone National Ambient Air Quality Standard (NAAQS).'' EPA further noted that the assessment must ''take into account the meteorological conditions and ambient concentrations associated with the violations of the ozone NAAQS in the period 1995–6 * * *'' (63 FR 37276).

The 1999 Plan's attainment assessment looks at air quality in 1995 and then uses modeling to determine how much improvement in air quality would be needed between 1995 and 2000 to attain the standard. The difference between the level of emissions in 1995 and 2000 is the emissions reduction target. According to the analysis in the 1999 Plan, if VOCs were reduced by 128 tons per day (tpd) and NO_X emissions were reduced by 92 tpd between 1995 and 2000, the Bay Area would come into compliance with the federal 1-hour ozone standard. CARB submitted a SIP that included adopted measures or commitments to adopt measures to achieve those levels of reduction.

However, prior to the time EPA could take final action on the submitted plan, monitoring data for the attainment year became available. According to the monitoring data recorded by the Bay Area's official monitoring network, the Bay Area experienced three exceedance days in 2000, and two of those exceedances occurred at the same monitor.[5] Because the Bay Area had air quality data inconsistent with attainment in the attainment year, EPA must propose to disapprove the 1999 Plan's attainment demonstration.

C. Reasonable Further Progress Demonstration

In our final redesignation rulemaking, we required the Bay Area plan to provide for reasonable further progress toward attainment. 63 FR 37275. Section 172(c)(2) contains the requirement for reasonable further progress (RFP). RFP is defined as ''such annual incremental reductions in emissions * * * as are required by this part [D] or may reasonably be required by the Administrator for the purpose of ensuring attainment * * * by the applicable date.'' Section 171(1). In the proposed rule, we explained that ''[b]ecause EPA is not proposing to require submission of adopted measures until September 1998, the Agency believes that the RFP requirement would be satisfied if all required emission reductions occur by * * * [the] attainment year.'' 62 FR 66581. Because the Bay Area did adopt and implement the control measures in the 1999 Plan by the November 15, 2000 attainment deadline, we are proposing to find that the 1999 Plan provides for RFP through 2000.

D. Reasonably Available Control Measure Demonstration

In our proposed and final redesignation rulemakings, we indicated that the State's plan must comply with the general nonattainment plan requirements of CAA section 172 (62 FR 66580, December 19, 1997; and 63 FR 37275, July 10 1999). In the proposal, we summarized the section 172 requirements and specifically stated that the plan would have to provide for ''implementation of all reasonably available control measures (RACM) as expeditiously as practicable * * * to the extent that it [RACM] has not already been complied with.'' 62 FR 66580.

EPA's preliminary RACM guidance is set out in the General Preamble at 57 FR 13498, 13560 (April 16, 1992). Under this guidance, States must consider available control measures, adopt such measures as are reasonably available, and provide a justification why measures that may be available, were not considered RACM and were not adopted in the SIP. EPA also stated that ''[t]he section 108(f) measures should be considered by States as potential air quality control options'' and that states should consider ''any measure that a commenter indicates during the public comment period is reasonably available for a given area.''[6]

In the documentation accompanying the 1999 Plan submittal, there were a number of public comments made requesting consideration of specific transportation and stationary source control measures. Because the plan fails to justify why these or other potential measures are not reasonably available and would not advance the attainment date,[7] we are proposing to disapprove the RACM demonstration in the 1999 Plan. However, as discussed below, while we are not proposing to approve the control measure commitments in the 1999 Plan as meeting the CAA's RACM requirement, we are proposing to approve those commitments under CAA sections 110(k)(3) and 301(a) because they will strengthen the SIP.

E. Control Measures

Section 172(c)(6) requires attainment plans to contain enforceable emissions limitations and other control measures, means or techniques, necessary to provide for attainment by the applicable date. The 1999 Plan relies on both previously approved SIP measures and new measures to demonstrate emissions reductions consistent with the 128 tpd VOC and 92 tpd NO_X targets. One

[4] See 40 CFR 50.9 and appendix H.

[5] Attainment of the 1-hour ozone NAAQS is measured over a three-year period and is based on the number of exceedances that occur that period. An exceedance of the 1-hour ozone standard occurs when the hourly average ozone concentration at a given monitoring site is greater than or equal to 0.12 parts per million (ppm) (40 CFR 50.9(a); 40 CFR part 58, appendix F, section 2). An area is not attaining the 1-hour ozone NAAQS if, over a three-year period, the average number of exceedances per year exceeds one. The monitor with two exceedances was located on First Street in Livermore. See October 25, 2000 memorandum from Bob Pallarino, EPA Region 9 Technical Support Office, to Julia Barrow and Celia Bloomfield, EPA Region 9 Planning Office.

[6] The section 108(f) measures are transportation control measures listed in section 108(f) of the CAA. They include measures such as programs for improved public transit and trip-reduction ordinances.

[7] See EPA guidance memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors entitled, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' dated November 30, 1999.

hundred percent of the NO_X reductions and about ninety percent of the VOC reductions are expected to come from already SIP-approved stationary, area, and mobile source measures.[8] The 1999 Plan describes ten new stationary, area, and mobile source control measures and includes a commitment to ''achieve an additional 11 tpd reduction in VOC emissions by June 2000 through adoption and implementation of any combination of the control measures listed in Table 10 and Table 12 [of the 1999 Plan]'' (1999 Plan, p. 25).

All of the new measures have been adopted and submitted to EPA for approval into the SIP with the exception of the single mobile source control measure, MS–01 (which requires new golf cart purchases to be electric in ozone nonattainment areas throughout California). This rule was adopted by CARB in 1994 and became applicable to the Bay Area upon redesignation to nonattainment.

In this action, EPA is proposing to approve the adoption and implementation dates of the new measures and the commitment to achieve 11 tpd of VOC reductions from any combination of those measures. EPA is making this proposal pursuant to CAA sections 110(k)(3) and 301(a) for the purpose of strengthening the SIP.

A summary of the 1999 Plan's new control measures, along with their adoption dates, implementation dates, and estimated emissions reductions, are listed below in Table 1 labeled ''New Bay Area Measures.''

TABLE 1.—NEW BAY AREA MEASURES

VOC measure (BAAQMD regulation No.)	Adoption date	Implementation date	Estimated VOC reductions (tpd), 1995–2000
SS–01: Can and Coil Coating (8–11)	11/19/97	1/1/98, 1/1/2000	0.35
SS–02: Equipment Leaks at Refineries and Chemical Plants (8–18)	1/7/98	1/7/98	1.20
SS–03: Pressure Relief Devices (8–28)	12/17/97, 3/18/98	7/1/98	0.13
SS–04: Solvent Cleaning (8–16)	9/16/98	9/1/99	2.10
SS–05: Graphic Arts Operations (8–20)	3/2/99	7/1/99, 1/1/2000	0.80
SS–06: Polystyrene Manufacturing (8–52)	1999	6/2000	0.26
SS–07: Organic Liquid Storage: Low Emitting Retrofits for Slotted Guide Poles (8–5).	1999	6/2000	0.48
SS–08: Gasoline Dispensing Facilities (8–7)	1999	6/2000	3.20
SS–09/SS–10: Prohibit Aeration of Petroleum Contaminated Soil or Industrial Sludge at Landfills (8–40).	1999	6/2000	2.68
MS–01: Electric Golf Carts: Require New Golf Cart Purchases to be Electric (ARB State Rule).	1994	3/2000	0.1

F. Contingency Measures

Under CAA section 172(c)(9), a plan must contain contingency measures that go into effect if the area fails to attain the standard. The Act specifies that the measures must be implemented without further action by the air district or its co-lead agencies in the event of a failure to attain by the required date (CAA section 172(c)(9)). The general planning requirements of the CAA do not specify how many measures or what level of reductions must be included in a plan for contingency purposes. EPA, however, has stated that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. 57 FR 13511.

EPA is proposing to approve as contingency measures the measures in Table 18 of the State submission, which are part of the SIP and can be implemented without further agency action. These measures are listed below in Table 2, ''Bay Area Contingency Measures.'' These measures provide for substantial emissions reductions of both VOC and NO_X in the years following the attainment year. (See Table 2 below.) We believe that these measures provide for sufficient emissions reductions to ensure continued progress toward attainment while the State is preparing its next plan and should be approved as meeting the requirements of section 172(c)(9).[9]

The obligation to implement the contingency measures is clearly stated in the 1999 Plan: ''If the Bay Area records more than one exceedance at a single monitoring site in 2000 (or in 2001 [if the attainment date is extended]), a requirement to implement contingency measures will be triggered.'' (See 1999 Plan, p. 27.) In fact, all of the measures are already being implemented as they were triggered by the area's failure to attain in 2000.

TABLE 2.—BAY AREA CONTINGENCY MEASURES

Adopted control measure (BAAQMD regulation or State/Federal measure)	Estimated VOC reductions (tpd)			Estimated NO_X reductions (tpd)		
	2001	2002	2003	2001	2002	2003
Gasoline Dispensing Facilities (8–7)	0.5	0.9	1.1	.....	.....	.....
Graphic Arts Printing and Coating Operations (8–20)	0.8	0.7	0.7	.....	.....	.....

[8] Existing SIP-approved control measures and their associated emissions reductions between 1995 and 2000 are listed in Table 9 and 11 of the 1999 Plan. The Plan also relies on one federally promulgated EPA measure related to gasoline-powered recreational boats to achieve 0.7 tpd of the VOC target.

[9] As explained in section IV.C. below, a new plan is required one year after a final finding of failure to attain is published. If EPA takes final action on the finding, we anticipate that we will do so in the summer of 2001. Therefore, a new plan would be due in the summer of 2002.

TABLE 2.—BAY AREA CONTINGENCY MEASURES—Continued

Adopted control measure (BAAQMD regulation or State/Federal measure)	Estimated VOC reductions (tpd)			Estimated NO_X reductions (tpd)		
	2001	2002	2003	2001	2002	2003
Aeration of Contaminated Soil and Removal of Underground Storage Tanks (8–40)	0.5	1.0	1.5	.....	.....	.....
On Road motor Vehicles-Light and Medium Duty Cars and Trucks (ARB)	14.4	26.8	39.1	16.8	26.4	35.3
On Road Motor Vehicles—Heavy Duty Trucks (??)	0.1	0.5	0.7	3.3	5.0	6.7
Off Road Mobile Sources (ARB)	0.1	0.1	0.2	3.8	7.8	9.5
Gasoline-Powered Recreational Boats—Exhaust Emission Standards (EPA)	0.7	1.6	3.6	(.1)	(.1)	(.2)
Stationary Internal Combustion Engines (9–8)	.....	.....	.....	1.0	1.0	0.9
Stationary Gas Turbines (9–9)	.....	.....	.....	0.9	0.9	0.8
Glass Melting Furnaces (9–12)	.....	.....	.....	0.2	0.2	0.1

G. Transportation Conformity Budgets

EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to the SIP and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will produce no new air quality violations, will not worsen existing violations, and will not delay timely attainment of the NAAQS (CAA section 176(c)(1)). Transportation activities must not exceed the emissions budgets in the SIP.[10]

The 1999 Plan includes a budget of 175.2 tpd for VOC and 247.1 tpd for NO_X, both for the year 2000. These budgets are based on projected emissions for motor vehicles in the attainment year and take into account expected growth. Since we know that the attainment year emissions levels were insufficient to provide for attainment (See II.B. above) and the attainment assessment cannot be approved, the budgets that are based on those levels are inadequate and cannot be used for conformity purposes.[11] (See 40 CFR 93.118(e)).

H. Transportation Control Measure Deletions

The Bay Area's SIP currently includes 28 transportation control measures (TCMs) that were developed to reduce emissions from automobiles. The first 12 TCMs were approved into the SIP in 1983 when EPA approved the Bay Area's 1982 attainment plan (48 FR 57130, December 28, 1983). EPA approved TCMs numbered 13 through 28 in 1995 as part of the Bay Area Maintenance Plan (60 FR 27028, May 22, 1995).

TCMs, like other control measures, remain in the SIP and must continue to be implemented until they are either substituted or removed from the SIP in accordance with section 110(l) and, if applicable, section 193. (See also 64 FR 66832, November 30, 1999.) Section 110(l) states that the ''Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *;'' Substitution or removal of TCMs that are in a nonattainment plan and that were approved prior to 1990 or based on a plan established before 1990 must also ''insure equivalent or greater emission reductions'' (CAA section 193). For more information on TCM replacement and removal, please see 58 FR 62188, 62198 (Nov. 24, 1993).

The Bay Area's 1999 Plan proposes to remove four TCMs from the ozone SIP: TCMs 6, 11, 12, and 16. Two of the TCMs identified for removal were intended as carbon monoxide (CO) control measures and not ozone control measures. The Bay Area is therefore requesting to remove TCMs 11 and 12 from the SIP for ozone purposes but to keep them in the SIP for CO purposes. In addition, the Bay Area requests removal from the SIP of TCMs 6 and 16 because these measures require transit construction activities that have been completed, are permanent, and cannot be reversed.

EPA is proposing to approve the request to remove TCMs 11 and 12 from the Bay Area ozone SIP as the measures were not intended to provide ozone reductions and will remain in the SIP as part of the CO maintenance plan. In short, the requirement to implement them will continue.

EPA is also proposing to approve the deletion of TCMs 6 and 16 from the approved SIP. TCM 6 is a measure to improve light rail construction in the Guadalupe Corridor and various BART extensions. No emissions reductions were credited for TCM 6 in the SIP indicating that the TCM did not assume future implementation. EPA believes that the TCM 6 projects have been fully constructed, cannot be reversed, and that removal of TCM 6 will not result in the loss of any air quality benefit credited in the SIP. TCM 16 is a measure to extend BART to Colma. Unlike TCM 6, TCM 16 does take credit for emissions reductions, implying continued future operation of the Colma BART station. EPA is specifically requesting comment on our proposal to remove TCM 16 from the SIP, as the Colma BART extension has been constructed, and we believe, given the investment in the construction and future transportation needs in the area, its operation is certain to continue with or without TCM 16 remaining in the SIP.

TABLE 3.—TCMS PROPOSED FOR DELETION FROM THE SIP

TCM 6	Construction of Guadalupe light rail in Santa Clara County and design work for the North Concord BART extension and Warm Springs extension.
TCM 11	Gasoline Conservation Awareness Program (GasCAP).
TCM 12	Santa Clara Commuter Transportation Program.
TCM 16	Construction of BART extension to Colma.

[10] The Bay Area's conformity rules, which include consultation procedures, were approved into the SIP on October 21, 1997 (62 FR 54587).

[11] EPA proposed in 1999 to find these budgets adequate (64 FR 55220, October 12, 1999). Several public comments were received objecting to the proposal. Commenters argued that the budgets were not adequate to protect air quality and that they were not adequate to prevent environmental justice problems. The proposal was never finalized. Some of these same commenters are party to the January 8, 2001 lawsuit compelling EPA action on the 1999 plan, which is the subject of this notice. *Bayview Hunters Point Community Advocates et al.* v. *Whitman,* C 01 0050 BZ (N.D.Ca).

I. Environmental Justice

Environmental justice (EJ) was a significant issue in public comments to EPA on its proposal to find the conformity budgets in the 1999 submittal adequate (64 FR 55220, October 12, 1999). It has also been an issue in subsequent discussions between EPA and other parties regarding conformity budgets and air quality plans. These parties include community groups, local and State agencies, and the U.S. Department of Transportation (U.S. DOT).

Executive Order 12898 mandates that each federal agency ''[t]o the greatest extent practicable * * * shall make achieving environmental justice part of its mission.'' EPA intends to fulfill its obligation to avoid disproportionate adverse impacts on minority and low-income populations.

Some of the specific issues raised by commenters were that the budgets adopted by the local agencies and CARB were not sufficiently protective of air quality. They also argued that approving such budget caps would allow the area to increase driving substantially, and that this would have disproportionate adverse impacts on people and communities near major roads. Many members of these communities have low incomes and/or are people of color. Commenters also expressed objections to the budgets on the basis that they would decrease pressure on local agencies to increase transit ridership. They stated that this harms transit-dependent communities and public health.

EPA has made it clear to the State and local agencies that in developing a new air quality plan there must be a full public involvement process that provides opportunities to satisfy environmental justice concerns. The U.S. DOT has also issued guidance on environmental justice (''Implementing Title VI Requirements in Metropolitan and Statewide Planning'', Linton and Wykle, Administrators respectively of the Federal Transit Administration and the Federal Highway Administration). We believe that this means that the transportation planning process must include a comprehensive and transparent public component. MTC has just initiated an EJ Workgroup to begin addressing that need. The BAAQMD adopted ''Guiding Principles for Environmental Justice'' on May 12, 1999, including the principle to ''continue outreach and education programs to strengthen the public's ability to participate in the District's Plan and rule development * * *'' and has convened an environmental working group to advise it in implementing those principles. EPA will work with and support the local agencies and CARB in addressing these concerns and issues. EPA also intends to address EJ principles as appropriate in its review of and action on new air quality plan submittals and in reviewing transportation planning activities and commenting on them.

III. Summary of Proposed Action on the 1999 Plan

A. Proposed Approval

EPA is proposing to approve the following portions of the 1999 Plan: The baseline emissions inventory; the RFP demonstration through 2000; the commitment to achieve additional reductions from implementation of new control measures (see Table 1 above); and contingency measures for failure to attain in 2000 (see Table 2 above). EPA has determined that these plan elements meet the requirements of CAA section 172(c) and EPA's final redesignation rulemaking (63 FR 37258, July 10, 1998). EPA is also proposing to approve removal of TCMs 6, 11, 12, and 16 (see Table 3 above) from the SIP for ozone purposes as EPA has concluded that the removal is consistent with sections 110(l) and 193 of the CAA. EPA's evaluation of the baseline emissions inventory, RFP demonstration, control measure commitments, contingency measures, and TCM deletions are discussed in sections II.A., II.C., II.E., II.F., and II.H. above.

B. Proposed Disapproval

EPA is proposing to disapprove the attainment assessment contained in the 1999 Plan because monitoring information indicates that the area failed to attain the ozone NAAQS by November 15, 2000 (CAA section 172(c)(1) and (2)). EPA is proposing this disapproval without issuing a protective finding for the motor vehicle emissions budgets contained in the 1999 Plan because the attainment assessment did not provide for attainment in 2000. EPA can only issue a protective finding for budgets from an attainment SIP that is based on control measures that fully satisfy statutory requirements for demonstrating attainment. EPA is also proposing to disapprove the RACM demonstration as not meeting the requirements of CAA section 172(c)(1). EPA's evaluation of the attainment assessment, emissions budgets, and RACM and reasons for proposed disapproval of these plan elements are discussed in sections II.B., II. D. and II.G. above.

C. Consequences of the Proposed Disapproval

The CAA establishes specific consequences if EPA disapproves a state plan. Section 179(a) sets forth four findings that form the basis for application of mandatory sanctions, including disapproval by EPA of a state's submission based on its failure to meet one or more required CAA elements. EPA has issued a regulation, codified at 40 CFR 51.31, interpreting the application of sanctions under section 179 (a) and (b).

If EPA has not approved a SIP revision correcting the deficiency within 18 months of the effective date of a final disapproval rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If EPA has still not approved a SIP revision correcting the deficiency 6 months after the offset sanction is imposed, then the highway funding sanction will also apply in the affected area, in accordance with 40 CFR 52.31. In addition, CAA section 110(c)(1) provides that EPA must promulgate a FIP no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve a revised plan correcting the deficiency within 2 years of EPA's findings.

For more details on the timing and implementation of the sanctions, see 59 FR 39859 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.'' There are, however, certain exceptions to the general rule for the application of sanctions described above. The reader is referred to 40 CFR 52.31(d) for the circumstances under which the application of sanctions may be stayed or deferred.

In addition, one of the conformity consequences of the plan disapproval without a protective finding is commencement of a transportation conformity freeze. Under a conformity freeze, the area can proceed only with transportation projects included in the first three years of the current transportation plan and transportation improvement program (TIP) or with exempt projects. No new or amended transportation plans or TIPs can be adopted until the freeze is lifted. This would mean that no significant changes could be made to the design concept or scope of projects in the existing Regional Transportation Plan (RTP) or TIP. If the area submits a new attainment assessment with associated motor vehicle emissions budgets for

VOC and NO_X, the freeze will be lifted once EPA finds the new attainment budgets to be adequate. Note that the conformity freeze would not begin until the effective date of the final plan disapproval. (62 FR 43796, August 15, 1997 and EPA guidance memorandum from Gay McGregor, Director, Regional and State Programs Division, Office of Mobile Sources, to EPA Regional Air Offices entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' dated May 14, 1999, p. 9.)

The Bay Area's current RTP is scheduled to expire in January 2002, if it is not updated by then. If a conformity freeze is in effect when the current transportation plan or program expires, then a conformity lapse will result. A new transportation plan and TIP would need to be approved to end the conformity lapse, but as discussed above, a new plan and TIP cannot be approved until the conformity freeze is lifted. Under a conformity lapse, no transportation projects can proceed except for safety projects, transit projects, projects using transit operating funds, and projects implementing TCMs in the approved SIP.

D. Correcting the Deficiencies

In order to correct the deficiencies, the State must submit a new RACM demonstration, a new attainment assessment and new motor vehicle emissions budgets that remedy the deficiencies noted above, and are otherwise approvable under section 110 of the Act. Because the 2000 attainment deadline has already passed and EPA is proposing to make a finding that the Bay Area has failed to attain that deadline, the new attainment deadline would be governed by section 179(d)(3). Thus the new attainment assessment must demonstrate attainment ''as expeditiously as practicable'' but no later than 5 years from the finding of failure to attain. See section IV.C. of this proposal for further details on the requirements for the new plan.

IV. Proposed Finding of Failure To Attain

A. Clean Air Act Requirements for Attainment Findings Under Part D, Subpart 1

Under CAA section 179(c), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the 1-hour ozone standard. As noted above, the 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. We determine if an area has attained the 1-hour standard by calculating, at each monitor, the average number of days per year during the preceding three year period that the area has monitored levels above the standard. 40 CFR part 50, appendix H. This means that if an area has four or more exceedances at a single monitor during a three-year period, the average number of exceedance days per year exceeds one and the area has not attained the standard.

B. The Bay Area Failed To Attain by Its CAA Deadline

Table 5 lists each monitoring site in the Bay Area nonattainment area that experienced four or more days over the standard in the period 1998 to 2000. The table lists the number of days over the standard in all three years as well as the three-year average. For each of these sites, the average number of exceedance days per year over the three-year period 1998–2000 exceeds one.

TABLE 4.—OZONE AIR QUALITY IN THE SAN FRANCISCO BAY AREA NONATTAINMENT AREA (1999–2000)

Monitoring station	Exceedance days 1998	Exceedance days 1999	Exceedance days 2000	Average number of exceedance days per year 1998–2000
Concord	2	2	1	1.7
Livermore	6	2	2	3.3
San Martin	3	1	0	1.3

C. Consequences of Failure To Attain

Under section 179(d) of the Act, areas that fail to attain are required to submit a revision to the SIP that meets the requirements of CAA sections 110 and 172, including, but not limited to: (1) Demonstrations of attainment and RFP; (2) all reasonably available control measures (RACM); (3) baseline and attainment year inventories; and (4) motor vehicle emissions budgets. The plan must be submitted no later than one year after EPA publishes its final finding (CAA section 179(d)(1)).

Such a plan must demonstrate attainment as expeditiously as practicable, but no later than five years from the date of the final notice (CAA section 179(d)(3)). If the attainment deadline is before 2005, we propose that post-2000 RFP can be satisfied by implementing the reductions needed for attainment by the attainment date. If the attainment deadline is 2005 or later, EPA is proposing that the RFP requirement can be satisfied by phasing in 50% of the needed reductions half way between the time of the attainment demonstration and the attainment date.

At the same time that the State submits the plan described above, it must also submit new contingency measures meeting the requirements of CAA section 172(c)(9).

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted these regulatory actions from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, ''Federalism,'' and 12875, ''Enhancing the Intergovernmental Partnership.'' Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These proposed actions will not have substantial direct effects on California, on the relationship between the national government and California, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed actions do not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to these proposed actions.

C. Executive Order 13045

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

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

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Regulatory Flexibility Act

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

EPA's proposed partial approval/partial disapproval of the Bay Area SIP revision under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this partial approval/partial disapproval. Federal disapproval of the state submittal does not affect state-enforceability. Moreover, EPA's partial approval/partial disapproval of the submittal does not impose any new Federal requirements. EPA's proposed finding of failure to attain also does not impose additional requirements on small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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

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

With respect to the proposed finding of EPA's failure to attain, EPA notes that action in and of itself establishes no new requirements, and EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a) and 179(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In addition, even if the obligation for a State to revise its SIP does create an enforceable duty within the meaning of UMRA, this action does not trigger section 202 of UMRA because the aggregate to the State, local, and tribal governments to comply are less than $100,000,000 in any one year. Because this action does not trigger section 202 of UMRA, the requirement in section 205 of UMRA that EPA identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most effective, or least burdensome alternative that achieves the objectives of the rule is not applicable.

Furthermore, EPA is not directly establishing any regulatory requirements that may significantly impact or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of UMRA a small government agency plan.

G. National Technology Transfer and Advancement Act of 1995 (NTTAA)

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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 21, 2001.

Michael Schulz,

Acting Regional Administrator, Region IX.

[FR Doc. 01–7919 Filed 3–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 010111010–1010–01; I.D. 113000B]

RIN 0648-AO42

International Fisheries Regulations; Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; implementation of Inter-American Tropical Tuna Commission (IATTC) recommendations to reduce bycatch in the purse seine fishery and to establish a regional vessel register.

SUMMARY: NMFS proposes fishery conservation and management measures for the purse seine fishery in the eastern Pacific Ocean (EPO) to reduce bycatch of juvenile tuna, non-target fish species, and non-fish species. The measures were recommended by the IATTC and approved by the Department of State (DOS), in accordance with the Tuna Conventions Act of 1950. These proposed regulations are intended to ensure that U.S. fisheries are conducted according to the IATTC's recommendations, as approved by the DOS. In addition, the proposed rule would establish reporting requirements for U.S. vessels fishing for tuna in the EPO so that NMFS can provide information to the IATTC for a regional vessel register. This will promote more consistent compliance across all member nations.

DATES: Comments must be submitted by April 30, 2001. A public hearing will be held on this action in San Diego, CA and announced by NMFS in a separate document.

ADDRESSES: Comments on the proposed rule should be sent to Dr. Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to the NMFS address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 00503 (Attn: NOAA Desk Officer). Copies of the Environmental Assessment/Initial Regulatory Flexibility Analysis (IRFA) are available from Svein Fougner at the NMFS address.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure conservation and management of yellowfin and other fish species taken by tuna fishing vessels in the EPO (also known as the Convention Area), which is generally described as the waters bounded by the coast of the Americas, 40° N. lat., 150° W. long., and 40° S. lat. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of tuna stocks and conditions in the fisheries to determine appropriate harvest levels or other measures to prevent overexploitation and promote maximum sustainable yield. The IATTC also has recently devoted increasing time and resources to assessing the need for and recommending conservation and management measures to deal with problems such as bycatch in the tuna fisheries.

At its annual meeting in June 2000, the IATTC adopted a resolution that recommended a number of measures to address concerns about bycatch in the purse seine fishery. First, the IATTC agreed to a 1-year pilot project in which all purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna caught, except fish considered unfit for human consumption for reasons other than size, in order to provide fishermen with a disincentive to capture small tuna. That is, requiring full retention would fill the vessel earlier such that total fishing mortality from a full vessel would represent fewer dead fish than if discard of dead juvenile fish had allowed further fishing on a trip. A single exception would be the final set of a trip, when there might be insufficient well space to accommodate all fish caught in the net.

In addition, the IATTC recommendation calls for requiring purse seine fishers to promptly release all sea turtles, sharks, billfishes, rays, mahimahi, and other non-target species. The recommendation also specifies measures to handle and release encircled or entangled sea turtles. These include stationing a speedboat close to the net whenever a sea turtle is sighted in the net in order to assist in the release of the turtle; ceasing net roll if a turtle is entangled in the net, and not resuming net roll until the turtle has been disentangled and released; and if necessary, resuscitating before releasing a turtle that is brought aboard the vessel.

The IATTC staff would evaluate the effects and effectiveness of the pilot program and provide advice as to whether the program should be extended, modified, or replaced by alternative measures. DOS approved this recommendation.

At its June meeting, the IATTC also adopted a resolution to establish a regional vessel register. The vessel register would include all commercial vessels fishing for tuna in the Convention Area. Thus, purse seine, troll, harpoon, drift gillnet, and longline vessels would be included on this register. Charter and commercial passenger fishing vessels would not be included on the register. The register is intended to promote better and more consistent national monitoring and enforcement of IATTC recommendations and thus promote compliance with those recommendations. It also would provide a sound basis for identifying vessels that

might be affected by different management actions and for evaluating the manner in which they would be impacted. The DOS approved this recommendation as well.

This proposed rule would implement the IATTC recommendations by establishing bycatch reduction measures and reporting requirements consistent with those recommendations.

Duplication with other reporting requirements would be avoided to the extent possible. It is acknowledged that existing information collections provide most of the data required for the vessel register. For example, Coast Guard Documentation Records for vessels greater than 5 tons carrying capacity provide vessel name, tonnage, and other vessel characteristics. Many of these vessels also have licenses issued under the High Seas Fishing Compliance Act (HSFCA), and the applications for those permits provide much of the information (e.g., previous vessel names, vessel characteristics) that NMFS must provide to the IATTC. A standard vessel register form has been provided by the IATTC and will be used to collect the needed information. NMFS proposes to identify all owners of vessels who have fished for species under IATTC purview in the EPO; to review existing data sources and, to the extent information is available from those sources, fill in the relevant information on the vessel register form; and to require that vessel owners confirm the filled-in information and provide information not already available. Thus, persons who have already provided the needed information under existing requirements (e.g., HSFCA) would not be required to provide the same information to NMFS a second time.

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impacts that the proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

For the 2001 fishing year, the proposed action would require full retention of all tuna taken in a set and brought on board a fishing vessel, except on the last set when there might not be sufficient well space to accommodate all tuna in a set; require the prompt release of non-target species; and require the use of special procedures to release sea turtles with a minimum of injury, and reduce overall mortality. These measures should not have significant economic impacts. Although requiring fishermen to retain all tuna caught may force the fishermen to retain fish with little market value (due to small size), the requirement should result in faster filling of the vessel and thus less total cost for a fishing trip. Furthermore, the requirement would reduce the time normally taken to sort the tuna catch by size to discard small fish. Moreover, in the long term, any reduction in discards and associated mortality should assist in maintaining the productivity of the stocks, which would benefit the fisheries through higher catches in the future. The requirement to promptly release non-target species essentially codifies a current practice and therefore would not generate additional cost to the fishermen. The requirement to release non-target species would not prevent retention of occasional non-target species for consumption on the vessel. Finally, the measures to handle sea turtles with special care are already standard practice and the measure relating to resuscitation of comatose sea turtles is already codified in the regulations at 50 CFR 223.206(d)(1)(B)(i) that implement the International Dolphin Conservation Program Act (IDCPA). No added costs to fishermen will be generated.

All of these measures would apply to U.S. purse seine vessels fishing for tuna in the EPO. From 1993-1997, the maximum number of U.S. tuna vessels active in the EPO was 35 vessels. Of these, 27 small vessels (less than 363 mt carrying capacity) are considered to be small business entities. None of the proposed measures would have any disproportionate economic impact on these small entities.

With respect to information collection, the proposed rule would require reporting certain information about vessels if that information is not already being reported to Federal or state agencies under other programs. It is estimated that about 1,290 vessels would be involved. However, most of the information required for the IATTC register can be obtained from other sources, and the added reporting burden is estimated to average about 565 hours per year for 3 years.

For these reasons, NMFS concludes that the proposed measures would not cause a 5-percent decrease in gross revenues or a 5- percent or greater increase in costs of production or compliance; cause compliance costs as a percent of sales to be 10 percent or higher for small entities than for large entities; or cause any increase in capital costs of compliance for any small entities. Nor would they result in 2 percent or more of the small entities affected being forced to cease business operations.

NMFS conducted an Endangered Species Act section 7 consultation on the U.S. purse seine fishery as it would operate under the terms of the IDCPA. The proposed rule would be more restrictive than the IDCPA regulations and, as described in the environmental assessment for this proposed rule, would further decrease the risk to any listed species. The proposed action is within the scope of that earlier consultation, and no further consultations are necessary.

This action is consistent with the Marine Mammal Protection Act, as amended by the International Dolphin Conservation Program Act.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The owners of approximately 1,290 vessels would be required to provide at least some information, but very few will be required to provide substantial information because most of the information needed for the regional vessel register is available from existing sources. It is estimated that the average response time for this collection will be 65-80 minutes. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Fisheries, High seas fishing, International agreements, Permits, Reporting and recordkeeping requirements.

Dated: March 27, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

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

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

2. In § 300.22, the heading is revised, the existing paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 300.22 Recordkeeping and reporting.

* * * * *

(b) The owner of any fishing vessel that uses purse seine, longline, drift gillnet, harpoon, or troll fishing gear to harvest tuna in the Convention Area for sale, or a person authorized in writing to serve as agent for the owner, must provide such information about the vessel and its characteristics as the Regional Administrator requests to conform with IATTC actions to establish a regional register of all vessels used to fish for species under IATTC purview in the Convention Area. This initially includes but is not limited to vessel name and registration number; a photograph of the vessel with the registration number showing; vessel length, beam and moulded depth; gross tonnage and hold capacity in cubic meters and tonnage; engine horsepower; date and place where built; and type of fishing method or methods used.

3. Section 300.28 is amended by adding paragraphs (h) through (l) as follows:

§ 300.28 Prohibitions.

* * * * *

(h) Discard any bigeye, skipjack, or yellowfin tuna off a purse seine vessel in the Convention Area, except fish unfit for human consumption due to spoilage, and except on the last set of the trip if the well capacity is filled;

(i) When using purse seine gear to fish for tuna in the Convention Area, fail to release any non-tuna species as soon as practicable after being identified;

(j) Land any non-tuna fish species taken in a purse seine set in the Convention Area;

(k) Fail to use the sea turtle handling and release and turtle resuscitation procedures in § 300.29(e); or

(l) Fail to report information when requested by the Regional Administrator under § 300.21.

4. Section 300.29 is amended by adding a new paragraph (e) to read as follows:

§ 300.29 Eastern Pacific fisheries management.

* * * * *

(e) *Bycatch reduction measures.* (1) Through December 31, 2001, all purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna brought on board the vessel after a set, except fish deemed unfit for human consumption for other than reason of size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire fish catch brought on board.

(2) All purse seine vessels must release as promptly as practicable all sharks, billfishes, rays, mahimahi (dorado), and other non-tuna fish species, except those being retained for consumption aboard the vessel.

(3) All purse seine vessels must apply special sea turtle handling and release procedures, as follows:

(i) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the turtle;

(ii) If a turtle is entangled in the net, net roll shall stop as soon as the turtle comes out of the water and shall not resume until the turtle has been disentangled and released;

(iii) If, in spite of the measures taken under paragraphs (e)(3)(i) and (ii) of this section, a turtle is accidentally brought aboard the vessel, and the turtle is alive and active, the vessel operator shall disengage the vessel and shall release the turtle as quickly as practicable, head first;

(iv) If a turtle brought on board under paragraph (e)(3)(iii) of this section is alive but comatose or inactive, the resuscitation procedures described in § 223.206(d)(1)(B)(i) of this title shall be used before release of the turtle.

[FR Doc. 01–7942 Filed 3–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 010319074–1074–01; I.D. 022201B]

RIN 0648–AP13

Atlantic Highly Migratory Species; Pelagic Longline Management

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to extend the closure for pelagic longline fishing within the Charleston Bump area through May 31, 2001. The intent of the proposed action, consistent with the final rule implementing the closure, is to partially recover environmental benefits in terms of bycatch reduction that were likely lost when the closure was delayed from February 1, 2001, until March 1, 2001. This proposed action would not affect the closure dates for this area in future years.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m., eastern standard time, on April 9, 2001. A public hearing on this proposed rule will be held on Tuesday, April 3, 2001, from 7 to 10 pm in Silver Spring, MD.

ADDRESSES: Written comments on the proposed rule should be submitted to Christopher Rogers, Acting Chief, Highly Migratory Species (HMS) Management Division (SF/1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet.

The location of the public hearing is: NOAA Science Center, 1301 East West Highway, Silver Spring, MD, 20910.

For copies of the draft Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), contact Karyl Brewster-Geisz at 301–713–2347 or write to Christopher Rogers.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz at 301–713–2347, fax 301–713–1917, e-mail karyl.brewster-geisz@noaa.gov.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635. The Atlantic pelagic longline fishery is also subject to the requirements of the Endangered Species Act, the Marine Mammal Protection Act, and the National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries because of documented interactions with sea turtles, marine mammals, and sea birds.

Pelagic Longline Fishery

Pelagic longline gear is the dominant commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target highly migratory species. The gear consists of a mainline, often many miles in length, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

Observer data and vessel logbooks indicate that pelagic longline fishing for Atlantic swordfish and tunas results in the catch of non-target finfish species (including bluefin tuna, billfish, and undersized swordfish) and protected species, including endangered sea turtles. Also, pelagic longline gear incidentally hooks marine mammals and sea birds during tuna and swordfish operations. The bycatch of animals that are hooked but not retained due to economic or regulatory factors contributes to overall fishing mortality. Such bycatch mortality may significantly impair the rebuilding of overfished finfish stocks or the recovery of protected species.

Bycatch Reduction Strategy

Atlantic blue marlin, white marlin, sailfish, bluefin tuna, and swordfish are considered overfished. In the HMS Fishery Management Plan (FMP) and Amendment 1 to the Atlantic Billfish FMP (Billfish Amendment), NMFS adopted a strategy for rebuilding these stocks through international cooperation at the International Commission for the Conservation of Atlantic Tunas (ICCAT). This strategy primarily involves reducing fishing mortality through the negotiation of country-specific catch quotas according to rebuilding schedules. The contribution of bycatch to total fishing mortality must be considered in the HMS fisheries, and accordingly ICCAT catch quotas for some species require that countries account for dead discards. The swordfish rebuilding plan that was adopted by ICCAT at its 1999 meeting provides added incentive for the United States to reduce swordfish discards. Additionally, Magnuson-Stevens Act national standard 9 for fishery management plans requires U.S. action to minimize bycatch and bycatch mortality to the extent practicable.

On August 1, 2000, NMFS published a final rule (65 FR 47214) to reduce bycatch, bycatch mortality, and incidental catch in the pelagic longline fishery. This final rule included three time/area closures within the U.S. Economic Exclusive Zone (EEZ): DeSoto Canyon, East Florida Coast, and Charleston Bump. Given the multi-objective approach taken to address bycatch in this fishery, these closures were established for different lengths of time and became effective at different times. Before the East Florida Coast and Charleston Bump closures were effective, NMFS became aware that the boundaries for these areas, as defined in the final rule, erroneously included areas outside the U.S. EEZ. On February 5, 2001, NMFS published a technical amendment (66 FR 8903) that corrected the boundaries for these areas and, to allow for public notice, delayed the beginning of the closures for East Florida Coast and the Charleston Bump until March 1, 2001. Since then, NMFS has received several comments noting that the delay in implementing the Charleston Bump closure would significantly reduce the bycatch reduction benefits expected from that closure in 2001 because one third of the annual closure period was lost due to the delay.

Bycatch Reduction Alternatives

NMFS considered three alternative actions to partially recover environmental benefits likely lost due to the delay of the closure from February 1, 2001, to March 1, 2001: status quo (end the Charleston Bump closure on April 30); extend the Charleston Bump closure for 2001 through May 31; and extend the Charleston Bump closure for 2001 through June 30.

NMFS rejected the status quo because the available data indicated environmental benefits could be regained while maintaining consistency with the objectives of the August 1, 2000, final rule. Logbook records from 1995 through 1998 show that on average 270 swordfish, 20 tunas other than bluefin, 2 blue marlins, 2 white marlins, 250 pelagic sharks, and 186 large coastal sharks are discarded each year in February. Logbooks also indicate that on average 126 swordfish, 6 tunas other than bluefin, 8 blue marlin, 6 sailfish, 15 white marlin, 55 pelagic sharks, and 160 large coastal sharks are discarded in the Charleston Bump in May. Thus, closing the Charleston Bump in May could regain almost half of the expected reductions in swordfish discards and most of the expected reductions in large coastal shark discards. Additionally, logbook records show that in May an additional 6 blue marlin, 5 sailfish, and 12 white marlin are discarded on average in the Charleston Bump compared to average discards in February. Thus, this closure could be beneficial to billfish. Logbook records also indicate that closing the Charleston Bump through June 2001 could also have a positive environmental impact and regain almost all the expected reductions in swordfish discards and result in greater reductions in discards of billfish, bluefin tuna, large coastal sharks, and sea turtles than expected to occur in February.

NMFS estimates that closing the Charleston Bump in May, 2001, could reduce the average annual net revenues of the 20 vessels fishing in the area in the past during that time by $9,544 and could reduce the average annual total gross revenue for those vessels by $281,821. Dealers that rely on fishermen who use pelagic longline gear and who have fished in the Charleston Bump area could buy approximately the same weight of fish as they have in previous years. The actual economic impact depends on the value of the fish bought. If the Charleston Bump is closed for both May and June, the average net annual revenues lost to fishermen could increase to $25,207 and the total gross revenues lost could increase to $742,087. Under the status quo, fishermen and dealers actually receive more revenues than expected in the August 1, 2000, final rule because the area was not closed in February, 2001, as originally intended.

Summary

NMFS proposes to extend the closure for the Charleston Bump area in the year 2001 through May 31. In subsequent years, the Charleston Bump would be closed from February 1 through April 30 as described in the August 1, 2000, final rule. NMFS specifically requests public comment on the impacts of extending the Charleston Bump closure through May 2001, both in terms of environmental benefits and costs to fishermen and dealers.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

NMFS has prepared an IRFA as required by the Regulatory Flexibility Act. As of October 2000, there were 443 directed and incidental swordfish permit holders under the limited access system. This number probably represents the number of active pelagic longline vessels in the fleet since most pelagic longline fishermen land swordfish along with other species. This proposed rule applies to all of these permit holders; however, in 1999, an average of only 20 vessels per month actually reported landings of fish harvested from the Charleston Bump area from February through June.

NMFS considered three alternative actions to regain, in 2001, a portion of the environmental benefits likely lost due to the delay of the closure for the month of February: status quo; extend the Charleston Bump closure through May 31; and extend the Charleston Bump closure through June 30. NMFS found that under status quo, the average permit holder may have earned $9,230 in net revenues, before payments to the captain and crew, more than originally expected due to the delay in effective date. Although the status quo alternative has minimal economic costs and a number of economic benefits, this alternative is not consistent with the objectives of the August 1, 2000, final rule to reduce bycatch in the Atlantic pelagic longline fishery and it does not regain any of the environmental benefits that may have been lost due to the delay in effective date.

NMFS found that fishing for HMS with pelagic longline gear in the Charleston Bump tends to be more profitable in May than in February. As a result, under the proposed alternative, permit holders could lose an average of $9,544 each after considering the February earnings that could have accrued due to the delay. However, this alternative is consistent with the objectives of the August 1, 2000, final rule to reduce bycatch in the Atlantic pelagic longline fishery and it does regain some of the environmental benefits that may have been lost due to the delay in effective date.

If the Charleston Bump is closed in May and June, permit holders could lose an average of $25,207 each after considering the February earnings that could have accrued due to the delay. Although this alternative could recover all of the environmental benefits likely lost due to the delay in effective date, this alternative has a large economic impact and was not selected because it would be inconsistent with the multi-objective approach previously adapted in the August 1, 2000, final rule.

All of the economic impacts discussed here would occur only in the year 2001. The RIR/IRFA provides further discussion of the economic effects of all the alternatives considered.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: March 26, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635, is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.21, paragraph (c)(2)(ii) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(2) * * *

(ii) In the Charleston Bump closed area from March 1 through May 31, 2001, and from February 1 through April 30 each calendar year thereafter;

* * * * *

[FR Doc. 01–7830 Filed 3–26–01; 5:05 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319071–1071–01; I.D. 030101H]

RIN 0648–AO53

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2001 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2001 fishing year, which is May 1, 2001, through April 30, 2002. To enhance at-sea enforcement, this rule also proposes a revision to the current trip limits that would specify them as possession limits with the provision that these levels be the maximum amount of spiny dogfish that may be landed in 1 calendar day. The intent of this proposed rule is to conserve and manage the spiny dogfish resource in compliance with the Spiny Dogfish Fishery Management Plan (FMP), its implementing regulations, and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on April 14, 2001.

ADDRESSES: Written comments on the proposed specifications must be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments—2001 Spiny Dogfish Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of supporting documents used by the Spiny Dogfish Monitoring Committee; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.nmfs.gov/ro/doc/nero.html.*

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to the list of overfished stocks in the 1998 Report on the Status of the Fisheries of the United States, prepared pursuant to section 304 of the Magnuson-Stevens Act. Because spiny

dogfish has been declared to be overfished, the Magnuson-Stevens Act requires the responsible Regional Fishery Management Council(s) to prepare measures to end overfishing and to rebuild the spiny dogfish stock. To address overfishing and other concerns, the Mid-Atlantic (MAFMC) and New England (NEFMC) Fishery Management Councils developed a joint Spiny Dogfish FMP during 1998 and 1999. The MAFMC was designated as the administrative lead for the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying annually the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, trip limits, and other gear restrictions) for the spiny dogfish fishery to achieve the annual fishing mortality rate (F) target specified in the FMP. The target F specified in the FMP for the 2001 fishing year is 0.03.

The implementing regulations require that the Spiny Dogfish Monitoring Committee (Monitoring Committee), comprised of representatives from states, MAFMC staff, NEFMC staff, NMFS staff, and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) review annually the best available information and recommend a commercial quota and other management measures necessary to achieve the target F for the upcoming fishing year. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the Monitoring Committee's recommendations and any public comment in making its recommendation to the two Councils. Afterwards, the MAFMC and the NEFMC make their recommendations to NMFS.

In 2000, the Councils were unable to reach agreement on a recommendation for the fishing year 2000 specifications. Therefore, NMFS issued an interim final rule implementing specifications at 65 FR 25887, May 4, 2000. The interim final rule implementing the 2000 specifications established a total quota of 4.5 million lb (2,041 mt), of which 4 million lb (1,814 mt) was allocated to the commercial fishery and 500,000 lb (226.7 mt) was set aside for spiny dogfish exempted experimental fishing projects. As required by the FMP, 57.9 percent of the commercial quota (2,316,000 lb (1,050,520 kg)) was allocated to period 1 (May 1, 2000–Oct. 31, 2000), and 42.1 percent of the commercial quota (1,684,000 lb (763,850 kg)) was allocated to period 2 (Nov. 1, 2000–April 30, 2001). In addition, the interim final rule established trip limits of 600 lb (272 kg)/trip for period 1, and 300 lb (136 kg)/trip for period 2. These measures were determined to be necessary to achieve the target F of 0.03 that was specified in the FMP rebuilding schedule for the 2000 fishing year.

Monitoring Committee Recommendations

The Monitoring Committee met on November 17, 2000, to review updated stock assessment information. F estimates from the Beverton-Holt model have increased from less than 0.05 prior to 1990 to greater than 0.3 since about 1995. F has exceeded the overfishing threshold level of 0.11 since 1991. Using audited Northeast Fisheries Science Center (NEFSC) spring survey trawl data, the Monitoring Committee compared mean number per tow and biomass per tow values for female spiny dogfish at length for three periods: 1985–1988, 1995–1997, and 1998–2000. The Monitoring Committee noted a reduction in the biomass of adult females (>85cm) throughout the time series. Biomass of large mature females was over 882 million lb (400 million kg) in 1990. Since 1990, the estimate of mature female biomass has declined steadily. The 3–year moving average of swept-area female biomass for theperiod 1998–2000 declined to about 128 million lb (58 million kg), or about 29 percent of the Monitoring Committee's originally recommended biomass rebuilding target (B_{msy}) of 200,000 mt (441 million lb). Also, the Monitoring Committee indicated that the large accumulation of female biomass between 60 and 90 cm evident in the 1995–1997 time period had been greatly reduced. This large accumulation of female biomass had provided the opportunity to rebuild spiny dogfish relatively quickly. Updated projections of future stock sizes under the FMP's target F of 0.03 indicate that, due to the recent reduction in the portion of the female stock between 60–90 cm, the time period necessary to rebuild the adult female biomass to the Monitoring Committee's originally recommended target has been extended from 10 years to approximately 17 years.

Coincident with the dramatic reduction in the adult female portion of the stock since the onset of the directed fishery in 1989, spiny dogfish pup production has also significantly declined. The survey indices for pups have been the lowest in the 33–year time series for the past 4 consecutive years (1997–2000), indicating recruitment failure.

The Monitoring Committee initially calculated the yield projection at F=0.03 for 2001 to be about 3.5 million lb (1.59 million kg) using a mean estimated population size. After considering the uncertainty and variability in the population estimates for spiny dogfish that were previously described in the interim final rule (65 FR 25887, May 4, 2000), the Monitoring Committee recommended a commercial quota of 4 million lb (1.814 mt), which was determined to achieve F=0.03 in 2001. As specified in the FMP, the 4-million lb (1.814–mt) recommended quota would be divided into two semi-annual periods as follows: 57.9 percent for period 1 (May 1–Oct. 31, 2000)–2,316,000 lb (1,050,512 kg); and 42.1 percent for period 2 (Nov. 1, 2000–April 30, 2001)–1,684,000 lb (763,849 kg). The Monitoring Committee recommended that possession limits remain the same as the 2000 fishing year: 600 lb (272 kg) for quotaperiod 1, and 300 lb (136 kg) for quota period 2. The Monitoring Committee also recommended that up to an additional 500,000 lb (226.7 mt) of spiny dogfish be allocated for exempted experimental fishery projects to examine the feasibility of a male-only spiny dogfish fishery, and to improve information on spiny dogfish bycatch and discard mortality.

Joint Spiny Dogfish Committee Recommendations

The Joint Spiny Dogfish Committee met on December 7, 2000, to consider the recommendations of the Monitoring Committee, and to make a recommendation to the Councils. The Joint Spiny Dogfish Committee recognized that the Councils are obliged to set a commercial quota consistent with F=0.03 and adopted the Monitoring Committee recommendation for a 4–million lb (1.81–million kg) quota to be allocated to the commercial fishery and 500,000 lb (226,796 kg) to be allocated for exempted experimental fisheries. The Joint Committee did not adopt the Monitoring Committee's possession limit, but made a recommendation for possession limits of 5,000 lb (2,268 kg) for both quota periods.

Alternatives Proposed by the Councils

The MAFMC met on December 12–14, 2000, and the NEFMC met on January 23 - 25, 2001, to consider the recommendations of the Joint Spiny Dogfish Committee and to recommend specifications for the 2001 fishing year. Both Councils adopted the Joint Committee's quota recommendation to allocate 4 million lb (1.81 million kg) to the commercial fishery, and 500,000 lb

(226,796 kg) for exempted experimental fishing projects for fishing year 2001. period 1 (May 1 through October 31) would be allocated 2,316,000 lb (1,050,512 kg), and period 2 (November 1 through April 30) would be allocated 1,684,000 lb (763,849 kg).

The two Councils differed on their possession limit recommendations. The MAFMC adopted the Monitoring Committee's recommendation for possession limits of 600 lb (272 kg) and 300 lb (136 kg) for periods 1 and 2, respectively. The NEFMC adopted the Joint Committee's recommendation for a possession limit of 5,000 lb (2,268 kg) for both quota periods. Both Councils also recommended prohibiting vessels from landing more than the specified limit in 1 calendar day, and revising the trip limit to a possession limit.

Proposed 2001 Measures

NMFS proposes a commercial spiny dogfish quota of 4 million lb (1.81 million kg) for the 2001 fishing year, as recommended by both Councils. The quota would be divided into two semi-annual periods as follows: 2,316,000 lb (1,050,512 kg) for period 1 (May 1, 2001–Oct. 31, 2001); and 1,684,000 lb (763,849 kg) for period 2 (Nov. 1, 2001–April 30, 2002). This level was recommended by the Monitoring Committee, and was determined to achieve the target F of 0.03, as specified in the FMP for the 2001-2002 fishing year. Although the Monitoring Committee and both Councils recommended that an additional 500,000 lb (226,796 kg) be allocated for experimental fishing projects, the FMP and its implementing regulations do not contain a provision to allow for the allocation of such an exempted quota set-aside. Only through Secretarial interim action was it possible to implement such a provision for the 2000 fishing year. Therefore, NMFS has not proposed such an allocation.

NMFS proposes to implement the spiny dogfish possession limits that were recommended by the Monitoring Committee and the MAFMC. These limits are: 600 lb (272 kg) for period 1, and 300 lb (136 kg) for period 2. The FMP discourages a directed fishery during the rebuilding period, because the directed fishery has traditionally targeted large mature female spiny dogfish, the stock component that is most in need of protection and rebuilding. A trip limit level of 5,000 lb (2,268 kg) could result in a directed fishery, which is inconsistent with the FMP. The proposed lower limits of 600 lb (272 kg) and 300 lb (136 kg) for period 1 and period 2, respectively, would allow fishermen to retain spiny dogfish caught incidentally, while discouraging directed fishing and, thereby, providing protection to mature female spiny dogfish.

An analysis of the trip limits examined the expected reduction in the regulatory discards of spiny dogfish based on economic decisions of vessel owners when faced with the subject trip limits. This analysis indicates that trip limits, in combination with a low commercial quota, will produce a high level of regulatory discards, because spiny dogfish are encountered, landed, and discarded in nearly all major fisheries in the region. However, the goal of the FMP and the 2001 specifications is to eliminate the directed fishery in order to meet the F=0.03 target. According to the FMP, high discards are also associated with the directed spiny dogfish fishery. Because the spiny dogfish landed in this fishery are primarily large females, smaller dogfish are usually discarded. Thus, providing for a low trip limit that eliminates the directed fishery should decrease the mortality of female spiny dogfish. In addition, since spiny dogfish is a low value species that is difficult to handle onboard vessels, the projection of spiny dogfish discards in the trip limit analyses is thought to be overestimated; vessel owners are expected to make efforts to avoid spiny dogfish while targeting other species because of the effort associated with discarding them. The proposed trip limits are intended to result in faster rebuilding of the adult spawning stock. Although discarding of spiny dogfish will likely continue in non-directed fisheries, it is not expected to cause negative impacts that have not already been considered in the FMP.

This rule also proposes changing the landing limits to be possession limits, with the provision that these limits be the maximum amount of spiny dogfish that may be landed in 1 calendar day. The intent of this proposed change would be to enhance at-sea enforcement and to prohibit multiple landings in the same day. This change would be consistent with recent changes in the landing limits for several other Mid-Atlantic fisheries.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The MAFMC prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. A copy of the complete IRFA can be obtained from the MAFMC (see **ADDRESSES**) or via the Internet at *http://www.nero.nmfs.gov/ro/doc/nero.html*. A summary of the analysis follows:

A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** section of the preamble. This proposed rule would not duplicate, overlap, or conflict with other Federal rules, nor would it establish any new reporting or recordkeeping requirements.

The proposed rule would apply to 596 vessels that reported spiny dogfish landings to NMFS in 1999, all of which are small entities. However, any of the 2,759 vessels that obtained Federal spiny dogfish permits in 2000 could potentially be affected by the proposed measures. Vessels that did not have a Federal fishery permit in 1999, such as vessels that fish in state waters only, were not included in the analysis. Although it is likely that the measures would have some impact on the activity of these vessels, should their owners choose to acquire a Federal spiny dogfish permit, the magnitude of this impact could not be determined.

The MAFMC's analysis of the action considered three alternatives. The MAFMC's alternative (Alternative 1) includes a commercial quota of 4 million lb (1,814 mt); possession limits of 600 lb (272 kg) during period 1 and 300 lb (136 kg) during period 2; and a 500,000–lb (2,268–kg) experimental fishery quota. (The experimental fishery quota is not included in this proposed rule.) The NEFMC's alternative (Alternative 2) includes a commercial quota of 4 million lb (1,814 mt); a possession limit of 5,000 lb (2,268 kg) for both quota periods; and a 500,000-lb (2,268–kg) experimental quota. The Councils' Alternative 3 would be no management action (Status Quo), which would result in an open fishery in the absence of annual specifications.

A large portion of affected vessels identified in the analysis would likely experience revenue losses under any of the alternatives. Under Alternative 3, with no quota or management measures, landings are projected to be 22.0 million lb (9,979 mt) in 2001–2002, based on an analysis prepared by the Monitoring Committee. This represents an increase from 2000 landings of 6.7 million lb (3,039 mt), but it also represents a 32-percent decrease from 1999 landings. Although unrestricted fishing would result in higher short-term landings, as compared to 2000, a continuation of unrestricted fishing would result in continually decreasing harvests over the long-term, due to continued declines in stock size resulting from overfishing. As landings declined over the long-term,

revenues would correspondingly decline for a large portion of the industry.

The potential changes in revenues under the 4-million lb (1,814 mt) quota (preferred alternative) were evaluated relative to landings and revenues derived during the 2000 - 2001 fishing year (6.7 million lb (3,039 mt) of landings, valued at $1.072 million). The analysis assumed that the revenues of the 596 vessels that landed spiny dogfish in 1999 would be reduced proportionately by the proposed action. The reduction in overall gross revenues to vessels was estimated to be about $432,000, or about $725 per vessel, compared to 2000–2001.

Of the 596 vessels, 36 would be expected to experience a reduction in total gross revenues (all species combined) of more than 5 percent as a result of the 2.7–million lb (1224 mt) reduction from actual 2000 landings. This represents 6 percent of the vessels landing spiny dogfish in 1999. The remaining 560 vessels would be expected to experience a reduction in total gross revenues of less than 5 percent.

The analysis of the Alternative 1 possession limits of 600 lb (272 kg) in period 1, and 300 lb (136 kg) in period 2 is based on possible economic decisions of vessel owners during spiny dogfish trips. The analysis includes estimates of the reduction in the number of trips, the level of landings during the quota period, and projected closure dates of the quota periods. The analysis projected that, on average, under a possession limit of 600 lb (272 kg) for period 1, landings will exceed the semi-annual quota of 2,316,000 lb (1,050 mt) on about September 5, 2001 (128 days into the quota period). During period 2, however, if a 300-lb (136 kg) possession limit was in effect, landings were projected not to exceed the semi-annual quota of 1,684,000 lb (764 mt). The analysis projected landings of only 615,213 lb (279 mt) during period 2 based on a 5 year average from 1994–1998. Thus, approximately 1,069,000 lb (485 mt) of allowable spiny dogfish landings were projected not to be landed. Although the commercial quota would be 4 million lb (1,814 mt), total landings under this alternative are projected to reach only 2,930,663 lb (1,329 mt). However, the analysis does not account for behavioral changes by vessel operators, which could impact the amount of landings. These changes could not be analyzed. Also, since vessels without Federal permits are not captured in the analysis, additional landings are likely to occur.

Under the Alternative 2 possession limit of 5,000 lb (2,268 kg), period 1 landings would exceed the semi-annual quota of 2,316,000 lb (1,050 mt) on about June 11, 2001 (42 days into the quota period). During quota period 2, the analysis projects that landings would exceed the semi-annual quota of 1,684,000 lb (764 mt) on about December 10, 2001 (40 days into the quota period).

For Quota Period 1, a possession limit of 5,000–lb (2,268–kg) is estimated to eliminate approximately 26 percent of fishing trips. Because the 600–lb (136–kg) possession limit is expected to eliminate any directed fishing on spiny dogfish, this possession limit is estimated to eliminate a maximum of 21 percent of fishing trips, but only to the extent that the possession limits on spiny dogfish would make those trips unprofitable. For Quota Period 2, a possession limit of 5,000–lb (2,268–kg) is estimated to eliminate approximately 22 percent of fishing trips. Eliminating a directed fishery as in Quota Period 1, a Quota Period 2 possession limit of 300 lb (136 kg) is estimated not to eliminate any fishing trips. The analysis indicates that some vessels would stop landing spiny dogfish because the possession limits would reduce revenue below operating costs. The Alternative 1 possession limits could eliminate 21 percent of trips in period 1. The Alternative 2 trip limit could eliminate 26 percent and 22 percent of trips in periods 1 and 2, respectively. The number of trips eliminated under a 5,000–lb (2,268–kg) possession limit increases because the length of the season under the higher trip limit would be significantly reduced. Revenues from spiny dogfish were estimated using an ex-vessel value of 16 cents per pound. It is possible that the effort from the eliminated spiny dogfish trips could move into other fisheries where vessels could make up for some or all of the lost revenue. However, it is not clear at what level this would occur or how much additional revenue it would create for the vessels.

Although more vessels would find it profitable to land spiny dogfish under a trip limit of 5,000 lb (2,268 kg) while the season is open, the season would close sooner than under the lower trip limits. Under the lower trip limits, vessels may still be able to make profitable trips by directing on other species and landing up to the trip limit of 600 lb (272 kg) or 300 lb (136 kg) of spiny dogfish. Revenues from spiny dogfish alone would be minimal, but the lower trip limits would likely end the directed fishery, consistent with the FMP. If major spiny dogfish markets were eliminated as a result of low supply due to a low trip limit or quick closure of the fishery, much of the revenue from the spiny dogfish fishery would also be drastically reduced.

The impact of the proposed specifications for the 2001 fishing year would be greatest in Massachusetts, North Carolina, Maryland, Maine, and New Jersey, which account cumulatively for 90 percent of spiny dogfish landings from 1988 through 1997. The communities of Wachapreague, VA, Plymouth, MA, and Scituate, MA have benefitted from dogfish landings that made up 76 percent, 74 percent, and 21 percent, respectively, of the value of all landed fish, based on 1997 NMFS landings data. Because these communities have recently derived a relatively high percentage of their fishing income from spiny dogfish, they would be most affected by the commercial quota and trip limit in the proposed specifications. These impacts were also experienced in the 2000 fishing year. Two of these communities, Plymouth and Scituate, are suburban areas of a large city and are substantially engaged in the businesses of the metropolitan area. The other community, Wachapreague, has significant fishing activities, but also attracts retirees and tourism, and is substantially dependent on these two sectors for economic activity. The analysis also concludes that small vessels (25 to 49 ft (7.6 to 14.9 m)) constitute 91 percent of affected vessels (those vessels experiencing a reduction in revenues of greater than 5 percent) under a 4–million lb (1,814–mt) commercial quota. However, if no action is taken, communities benefitting from dogfish landings would experience greater lost revenues in the long-term due to stock collapse as a result of allowing a directed fishery in the short-term. Long-term benefits to the stocks and revenues resulting from rebuilt stocks are expected to outweigh the short-term negative impacts to the sectors of the fishing industry that have utilized the spiny dogfish resource.

In summary, under alternative 1, a possession limit of 300 lb (136 kg) in quota period 2 would prevent the quota from being exceeded and the fishery would not close, although spiny dogfish revenues per trip would be low due to the low trip limit and low value of spiny dogfish. The lower trip limit would be more likely to cause the loss of spiny dogfish markets as a result of low supply. The spiny dogfish revenue losses associated with a trip limit of 300 lb (136 kg) in quota period 2 is expected to be higher than those associated with a trip limit of 600 lb (272 kg) in period

1 because the entire quota is projected to not be landed.

The Alternative 2 possession limit of 5,000 (2268 kg) lb would allow higher per-trip revenues from spiny dogfish and could reduce regulatory discards during the time the fishery was open. However, both quota periods would close after an estimated 41-day season. Even under this option, a large number of vessels would suffer revenue losses compared to 1999 revenues because of the overall quota level. Also, the high trip limit would encourage directed spiny dogfish fishing, which is inconsistent with the objectives of the FMP. Further, long-term revenues to participants in the fishery would likely be reduced due to future reductions in landings that could be required due to overfishing caused by directed fishing on spiny dogfish.

Under the no action alternative, the spiny dogfish fishery would remain unregulated and fishing mortality could be expected to increase to an F of 0.43. With no restrictions, the FMP projects that landings would increase to about 22.0 million lb (997.9 mt) in fishing year 2001. This would actually be a 32 percent decline from 1999 levels (the last year of an unregulated fishery) due to continued reductions in the stock size. Although revenues would increase in comparison to 2000, long term revenues from an unregulated fishery would continuously decline as stock size is reduced, due to overfishing.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 26, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraph (aa)(7) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(aa) * * *

(7) Possess more than the possession limit of spiny dogfish specified under § 648.235. The possession limit is the maximum amount that may be landed in any calendar day.

* * * * *

3. Section 648.235 is revised to read as follows:

§ 648.235 Possession and trip limit restrictions.

(a) *Quota Period 1.* From May through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 600 lb (272 kg) of spiny dogfish per trip;

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 300 lb (136 kg) of spiny dogfish per trip;

(2) Land only one trip of spiny dogfish per calendar day.

[FR Doc. 01–7937 Filed 3–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010105005–1005–01; I.D. 120600A]

RIN 0648–AO64

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement a portion of Amendment 9 to the Coastal Pelagic Species Fishery Management Plan (FMP), which was submitted by the Pacific Fishery Management Council (Council) for review and approval by the Secretary of Commerce (Secretary), and which was approved on March 22, 2001. Amendment 9 was prepared to provide for the documentation of bycatch in the coastal pelagic species fishery (CPS), to ensure that a standardized reporting methodology to assess the amount and type of bycatch is in place, to propose any necessary conservation and management measures to minimize bycatch, and to ensure that Indian fishing rights will be met according to treaties between the U.S. and specific tribes. This proposed rule would codify the procedures in Amendment 9 designed to ensure that Indian fishing rights will be met according to those treaties. This proposed rule also would codify a provision in the FMP that authorizes the Regional Administrator, Southwest Region, to require observers on fishing vessels for scientific purposes should such observers be necessary. The intent of this proposed rule is to codify provisions in the FMP and in Amendment 9 that are in need of codification.

DATES: Comments must be received by May 14, 2001.

ADDRESSES: Copies of Amendment 9, which includes an environmental assessment/regulatory impact review, may be obtained from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, Oregon, 97201.

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036.

SUPPLEMENTARY INFORMATION: The Council submitted Amendment 9 for Secretarial review on November 21, 2000. NMFS published a notice of availability for Amendment 9 in the **Federal Register** on December 21, 2000 (65 FR 80411), announcing a 60-day public comment period, which ended on February 20, 2001. The Secretary approved Amendment 9 on March 22, 2001.

On June 10, 1999, Amendment 8 to the Northern Anchovy Fishery Management Plan was partially approved by the Secretary. The portions of Amendment 8 approved by the Secretary added four species to the plan, implemented limited entry to prevent overcapitalization, and changed the name of the plan to the Coastal Pelagic Species Fishery Management Plan. Other provisions were not approved. The optimum yield (OY) for squid and the bycatch provisions in Amendment 8 were not approved because they did not conform to National Standards 1 and 9, respectively, of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 8, contrary to National Standard 9 failed to include a standardized reporting methodology to assess the amount and type of bycatch in the CPS fishery and did not explain whether additional management measures to minimize bycatch and the mortality of unavoidable bycatch were practicable. Also, Amendment 8 failed to provide an estimate of maximum sustainable yield (MSY) for squid, a necessary component to determine OY.

At its meeting in June 1999, the Council directed its Coastal Pelagic Species Management Team (CPSMT) to recommend appropriate revisions to the

FMP and report to the Council the following September. A public meeting of the CPSMT was held in La Jolla, CA, on August 3 and 4, 1999, and August 24, 1999, and a meeting was held between the CPSMT and the Coastal Pelagic Species Advisory Subpanel on August 24, 1999. At its September 1999 meeting, the Council gave further direction to the CPSMT regarding MSY for squid. At its March 2000 meeting, the Council asked the CPSMT for a more thorough analysis of the alternatives proposed for establishing MSY for squid and for bycatch. At a public meeting in La Jolla, CA, on April 20 and 21, 2000, the CPSMT reviewed comments from the Council, the Council's Scientific and Statistical Committee (SSC) and prepared additional material for establishing MSY for squid based on spawning area.

The Council distributed Amendment 9 for public review on July 27, 2000. At its September 2000 meeting, the Council reviewed written comments, received comments from its advisory bodies, and heard public comments, and decided to submit only two provisions for Secretarial review. Based on testimony concerning MSY for squid, the Council decided to include in Amendment 9 only the bycatch provision and a provision providing a framework to ensure that Indian fishing rights are implemented according to treaties between the U.S. and the specific tribes. Since implementation of the FMP, the CPS fishery has expanded to Oregon and Washington. As a result, the FMP must discuss Indian fishing rights in these areas. These rights were not included in the FMP; and the Council decided to address this issue in Amendment 9.

The Council decided to conduct further analysis of the squid resource and will prepare a separate amendment that addresses OY and MSY for squid.

This proposed rule would codify the procedures in Amendment 9 designed to ensure that Indian fishing rights are implemented according to treaties between the U.S. and the specific tribes. In addition, this proposed rule would codify a provision in the FMP that authorizes the Regional Administrator, Southwest Region, to require observers on fishing vessels for scientific purposes should such observers be necessary.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

> Codifying the procedure to address Indian fishing rights would provide a framework that may be used in the future if such action should be necessary. The States of California, Oregon, and Washington are collecting sufficient data to assess the impact of bycatch in the fishery; Codifying the Regulatory Administrator's authority to require observers would have no effect on any U.S. businesses, small or otherwise.

As a result, a regulatory flexibility analysis was not prepared.

NMFS initiated an informal consultation with the Protected Resources Division, Southwest Region, on January 12, 1999, with regard to the effects of Amendment 8 on endangered and threatened marine mammals and salmon under NMFS' jurisdiction. On June 3, 1999, NMFS determined that Amendment 8 would not likely adversely affect listed species under NMFS jurisdiction.

On June 8, 1999, NMFS provided the U.S. Fish and Wildlife Service (FWS) with background information on the harvest strategies in Amendment 8 and their potential impact on other species. NMFS requested that FWS concur with NMFS' determination that Amendment 8 would not likely adversely affect any threatened or endangered birds under FWS' jurisdiction. On June 10, 1999, the FWS stated that Amendment 8 would not adversely affect endangered or threatened birds under its jurisdiction.

NMFS reinitiated consultation with its Protected Resources Division, Southwest Region, following the publication of additional listed species. On, September 2, 1999, NMFS determined that the FMP was not likely to adversely affect Central Valley spring-run chinook and coastal California chinook. However, since the CPS fishery has expanded to Oregon and Washington; NMFS reinitiated consultation on April 19, 2000.

List of Subject in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: March 27, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660–FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Sections 660.518 and 660.519 are added to subpart I to read as follows:

§ 660.518 Pacific coast treaty Indian rights.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest CPS in their usual and accustomed fishing areas in U.S. waters.

(b) For the purposes of this section, ''Pacific Coast treaty Indian tribes'' and their ''usual and accustomed fishing areas'' is described at § 660.324(b) and (c).

(c) Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(d) *Procedures.* The rights referred to in paragraph (a) will be implemented in accordance with the procedures and requirements of the framework contained in Amendment 9 to the FMP and this Subpart.

(1) The Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public, will implement Indian fishing rights.

(2) The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries.

(3) An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS Southwest Regional Administrator at least 120 days prior to the start of the fishing season as specified at § 660.510 and will be subject to public review according to the procedures in § 660.508(d).

(4) The Regional Administrator generally will announce the annual tribal allocation at the same time as the annual specifications.

(e) The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

§ 660.519 Scientific observers.

All fishing vessels operating in the coastal pelagic species fishery, including catcher/processors, at-sea processors, and vessels that harvest in Washington, Oregon, or California and

land catch in another area, may be required to accommodate NMFS certified observers on board to collect scientific data. An observer program will be considered only for circumstances where other data collection methods are deemed insufficient for management of the fishery. Any observer program will be implemented in accordance with § 660.517.

[FR Doc. 01–7940 Filed 3–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010228052–1052–01; I.D. 010301D]

RIN 0648–AL95

Fisheries of the Exclusive Economic Zone Off Alaska; Amendments to Alaska Groundfish and Crab Fishery Management Plans to Revise the License Limitation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to implement Amendment 60 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 58 to the FMP for Groundfish of the Gulf of Alaska, and Amendment 10 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and the Aleutian Islands. This proposed rule would implement changes to the License Limitation Program (LLP) that would be made by these Amendments and is intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the affected FMPs.

DATES: Comments must be received by April 30, 2001.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Comments submitted via e-mail or the Internet will not be accepted. Copies of the draft environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The North Pacific Fishery Management Council (Council) recommended, and NMFS approved, the LLP to address concerns of excess capital and capacity in the groundfish and crab fisheries off Alaska. The LLP is one stage of a multi-staged process to reduce capacity and capital in the affected fisheries. The LLP replaced the Vessel Moratorium Program (VMP), a program implemented by NMFS to impose a temporary moratorium on the entry of new capacity in the groundfish and crab fisheries off Alaska and to help define the class of entities that would be eligible for licenses under the LLP. The VMP expired on December 31, 1999, and fishing under the LLP began on January 1, 2000 (63 FR 52642, October 1, 1998). The final rule establishing the application and transfer processes for the LLP was published August 6, 1999 (64 FR 42826). In October 1998, the Council recommended several changes to the LLP. These changes, which are embodied in Amendment 60 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 60), Amendment 58 to the FMP for Groundfish of the Gulf of Alaska (Amendment 58), and Amendment 10 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands (Amendment 10), are outlined below.

Proposed Changes to the LLP Qualifying Criteria

A. Amendment 10 would add a recent participation requirement to the eligibility requirements for a crab species license.

The Council recommended that a recent participation requirement be added to the eligibility requirements for a crab species license. Under the current LLP, a person applying for a crab species license must demonstrate that documented harvests were made from a qualifying vessel during two periods, the general qualification period (GQP) and the endorsement qualification period (EQP). The current documented harvest requirements for the two periods are as follows.

GQP: One documented harvest of any amount of crab species during the period beginning January 1, 1988, through June 27, 1992, or, if a legal landing of moratorium groundfish species was made from a vessel during the period beginning January 1, 1988, through February 9, 1992, and a legal landing of moratorium crab species was made from that vessel during the period beginning February 10, 1992, through December 11, 1994, one documented harvest of any amount of crab species during the period beginning January 1, 1988, through December 31, 1994.

EQP: Documented harvests during the EQP must be of the same crab species and in the same area as the endorsement.

1. Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (Tanner crab): Three documented harvests of any amount during the period beginning January 1, 1992, through December 31, 1994.

2. Aleutian Islands brown king crab: Three documented harvests of any amount during the period beginning January 1, 1992, through December 31, 1994.

3. Aleutian Islands red king crab: One documented harvest of any amount during the period beginning January 1, 1992, through December 31, 1994.

4. Bristol Bay red king crab: One documented harvest of any amount during the period beginning January 1, 1991, through December 31, 1994.

5. Pribilof red king crab and Pribilof blue king crab: One documented harvest of any amount during the period beginning January 1, 1993, through December 31, 1994.

6. St. Matthew blue king crab: One documented harvest of any amount during the period beginning January 1, 1992, through December 31, 1994.

7. Norton Sound red king crab and Norton Sound blue king crab: One documented harvest of any amount during the period beginning January 1, 1993, through December 31, 1994.

In accordance with Amendment 10, this proposed rule would add a third period, the recent participation period (RPP), to the documented harvest requirements for crab. Under the RPP, a person applying for a crab species license would have to demonstrate that one documented harvest of any amount of crab species was made from a qualifying vessel during the period extending from January 1, 1996, through February 7, 1998. The additional eligibility requirements of the RPP are proposed as a means of reducing the number of crab species licenses that might otherwise be issued to persons who have been inactive in the crab

fishery since 1995. Licenses given to such inactive fishermen could be transferred to persons who would become active in the fishery. This result would be contrary to the purpose of the LLP because it would likely increase fishing effort above the current levels in the crab fisheries.

The Council recommended that exemptions from the requirements of the RPP be provided based on public testimony and in consideration of the impacts the RPP would have on small fishing operations. The following exemptions are proposed:

Exemption 1: A person who only qualifies for a Norton Sound red king crab and Norton Sound blue king crab endorsement would not have to meet the documented harvest requirements of the RPP.

Exemption 2: A person whose qualifying vessel is less than 60 ft (18.3 m) LOA would not have to meet the documented harvest requirements of the RPP.

Exemption 3: A person whose qualifying vessel was unable to meet the documented harvest requirements of the RPP because it was lost or destroyed during the RPP period, but which made a documented harvest of crab species during the period beginning after the vessel was lost or destroyed through January 1, 2000, would not have to meet the documented harvest requirements of the RPP.

Exemption 4: A person who can demonstrate that his or her vessel made a documented harvest of crab species during the period beginning January 1, 1998, through February 7, 1998, and who obtains the fishing history of a vessel that meets the GQP and the EQP, or enters into a contract to obtain the fishing history of a vessel that meets the GQP and the EQP, by 8:36 am PST on October 10, 1998, would not have to meet the requirement of having a complete fishing history for qualification.

B. Amendments 60 and 58 would impose a transfer restriction on a groundfish LLP license earned from a vessel that did not have a Federal Fisheries Permit (FFP).

This proposed rule would implement Amendments 60 and 58 by imposing a transfer restriction on a groundfish LLP license that was earned from a vessel that did not have an FFP prior to October 9, 1998. Under this transfer restriction, the groundfish LLP license and the vessel from which the license was earned would have to be transferred together. In other words, this type of groundfish LLP license could not be transferred separately from the vessel, but could only be used by, and would have to be onboard, the original qualifying vessel.

Two exceptions to this transfer restriction are proposed. First, if the transfer of the fishing history of a vessel that did not have an FFP occurred before February 7, 1998, transfer of the qualifying vessel would not have to accompany transfer of the license; the license could be transferred separately from the vessel, but future transfers of the license would have to be accompanied by transfer of the ''new'' vessel. Second, a vessel that is subject to this provision but that is lost or destroyed could be replaced under the general vessel replacement provisions of the LLP.

Concerns of excess capacity in the affected fisheries again influenced the Council to make these recommendations. In considering the impacts these recommendations would have on license recipients, the Council justified the recommendations based on the fact that an FFP was required for any vessel that participated in a Federal groundfish fishery off Alaska. A vessel that participated in a Federal groundfish fishery off Alaska without an FFP did so illegally. If a vessel did not participate in a Federal groundfish fishery off Alaska, its qualifying documented harvests must have occurred in waters of the State of Alaska or other waters shoreward of the exclusive economic zone (EEZ) off Alaska. Groundfish fisheries in State waters or other waters shoreward of the EEZ off Alaska will not be managed under the LLP; therefore, the fishing operations of these vessels would not be affected. Hence, the Council did not consider it a hardship to the license recipient to directly link the transfer of a license to the vessel.

C. Amendments 60 and 58 would add gear designations to the groundfish license.

The Council recommended that a gear designation be added to a groundfish license. The gear designation is intended to prevent movement between the trawl sector and the non-trawl sector, and thus more effectively limit participation within a gear sector's fishery to those more historically dependent on the fishery. Under this provision, a license would be issued a ''trawl,'' ''non-trawl,'' or ''trawl/non-trawl '' gear designation based on gear participation before June 17, 1995. If, for example, a person used trawl gear and longline gear before June 17, 1995, the license issued to that person would have a trawl/non-trawl gear designation. This designation would mean that the license holder could use trawl and non-trawl gear. However, if a person only used trawl gear prior to June 17, 1995, the license issued to that person would have a trawl gear designation. This designation would mean that the license holder could only use trawl gear.

Two exceptions to the general rule on gear designations are proposed to account for recent activity. Under the first exception, a person could exercise a one-time option to switch gear designations if that person used a different gear type between June 18, 1995, and February 7, 1998. For example, a person used only trawl gear before June 17, 1995, but in 1997 used pot gear to catch Pacific cod. The use of this non-trawl gear type in 1997 would allow the person to exercise a one-time option to change the gear designation from trawl gear to non-trawl gear. A person could not qualify for a trawl/non-trawl gear designation by use of this exception.

Under the second exception, a person could request a gear designation change based on a significant financial investment. To qualify under the second exception a person would have to (1) demonstrate that a significant financial investment was made in converting a vessel and/or purchasing fishing gear on or before February 7, 1998, and (2) demonstrate that a documented harvest was made from the qualifying vessel with the new gear type on or before December 31, 1998. A significant financial investment is defined on the basis of industry testimony before the Council as having spent at least $100,000 toward vessel conversion and/or gear to change from a non-trawl to a trawl gear designation, or having acquired groundline, hooks or pots, and hauling equipment for prosecuting a fixed gear fishery to change from a trawl to a non-trawl gear designation.

D. Amendments 60 and 58 would limit the Community Development Quota (CDQ) vessel exemption.

An exemption to LLP licensing requirements for specific CDQ vessels is included in the LLP regulations at 50 CFR 679.4(k)(2)(iv). This exemption, similar to the one provided in the VMP, was intended to facilitate the ability of CDQ organizations to enter and prosecute groundfish fisheries with newly constructed vessels that did not qualify under the LLP. However, concerns over excess capacity in the groundfish fisheries, and acknowledgment that CDQ organizations are integrating into the existing fishing industry at a reasonable pace, induced the Council to recommend limiting the exemption. Further support for limiting this provision came from public testimony that CDQ organizations did not use this exemption under the VMP. The Council

recommended that the exemption be limited to vessels that met the CDQ vessel exemption criteria between November 18, 1992, and October 9, 1998, the date the Council recommended the limitation. Allowing CDQ vessels to qualify for this exemption through October 9, 1998, would ensure that the investment-backed expectations of any CDQ organization, which may have decided to use this exemption prior to the Council's decision to limit the provision, are protected.

E. Amendments 60 and 58 would allow limited processing by a person who holds a license with a catcher vessel designation.

The LLP currently separates licenses into two distinct processing designations: a catcher vessel designation, under which no fish can be processed, and a catcher/processor designation, under which fish can be processed. The Council, through public testimony, was presented with two reasons why some relief should be granted under these strict category distinctions.

First, public testimony indicated that an opportunity should be provided for entry into processing. Second, public testimony indicated that if limited processing opportunities were allowed, some catcher vessels would be able to exploit ''niche markets,'' which are small, specialized markets, such as a local grocery store or a restaurant to whom a fisherman sells frozen products directly. For these reasons, the Council recommended a limited processing exception. For the purpose of this exception, this proposed rule would define limited processing as 1 metric ton (mt) of round fish per day harvested on a vessel that is less than 60 ft (18.3 m) LOA under a groundfish license with a catcher vessel designation.

F. Amendments 60, 58, and 10 would add the vessel name to groundfish and crab species licenses.

This proposed rule would require that the name of the vessel be specified on an LLP license for groundfish and crab. This change was recommended as a regulatory amendment by the Council to address concerns about the movement of license holders among vessels contributing to excess capacity in the fisheries. Under current LLP regulations, a license issued under the LLP is not directly linked to a particular vessel. A license holder is able to use any vessel to fish for license limitation groundfish or crab species if that vessel complies with length restrictions. This ability may contribute to excess capacity by allowing a license holder to use a second vessel to fish while the first vessel was in port, or by allowing a license holder to alternate between vessels in different fisheries in different geographical locations. In both cases, a license holder could engage in uninterrupted fishing because breaks in fishing activity for unloading, vessel repairs, or running time could be eliminated through the use of another vessel.

To further refine the goal of the LLP to reduce excess capacity, the Council recommended that a specific vessel be designated on a groundfish or crab species license. A license holder would be authorized to use only the vessel designated on the license. A change to the vessel designated on the license would require agency action and would be counted toward the limit of one license transfer per calendar year.

Clarification of a Complete Fishing History for License Eligibility

The LLP is designed to place an upper limit on the amount of capitalization that can occur in the groundfish and crab fisheries. In doing so, the LLP also identifies the field of participants and provides stability during the development of a more comprehensive solution for conservation and management of the affected fisheries. One of the design features that assists in providing stability is the provision that allows the fishing history of a vessel to be transferred prior to license issuance. This provision protects the investment-backed expectations of a person who purchased a fishing history to meet the eligibility requirements for a license under the LLP. Although the LLP provides for these transfers, eligibility for a license under the LLP cannot currently occur by ''piecing together'' the fishing histories from two or more vessels, except under a specific provision of the LLP explained here.

The following explains what is meant by a complete fishing history for license eligibility and how NMFS intends to implement the Council's intent. The fishing history of a vessel that can be used as the basis for eligibility for a license under the LLP remains with the vessel until either (1) June 17, 1995, when it vests with the vessel owner, or (2) it is separated by the express terms of a written contract that clearly and unambiguously indicates that the fishing history is transferred or retained. The Council chose June 17, 1995, as the determining date because it coincides with the date the Council recommended the LLP.

Until June 17, 1995, the fishing history remains with the vessel unless separated by a contract. This contract could transfer the fishing history to a person other than the vessel owner. However, the fishing history would not qualify the receiver of it for a license unless that fishing history meets all the requirements for eligibility. Alternatively, this contract could retain the fishing history in the person who is selling his or her vessel before June 17, 1995. Again, this fishing history would not qualify the retainer of it for a license unless the fishing history meets all the requirements for eligibility. In either case, the contract has separated the fishing history from the vessel.

On June 17, 1995, the fishing history of the vessel, unless already separated by contract, vests in the vessel owner. After June 17, 1995, the vessel owner can transfer that fishing history by contract. A vessel sold after June 17, 1995, does not have a fishing history to use as the basis for license eligibility because its fishing history has vested in the owner and would have to be obtained through the express terms of a written contract.

A partial fishing history (i.e., a fishing history that does not meet all of the eligibility criteria) generally cannot be joined with another partial fishing history to form a complete one. However, there is one exception, which applies to eligibility for a crab license. The Council provided that a person who can demonstrate that a documented harvest of crab species was made from his or her vessel during the period beginning January 1, 1998, through February 7, 1998, can join that fishing history with another fishing history from a vessel that meets the GQP and the EQP, as long as the fishing history that meets the GQP and the EQP was acquired, or a contract to acquire that fishing history was entered into, by 8:36 am PST on October 10, 1998. Other than this specific exception, the fishing history of one vessel cannot be joined with the fishing history of another vessel to achieve eligibility.

In addition, a person cannot retain the partial fishing history of one vessel, move to another vessel, and continue the fishing history. The Council specifically provided for vessels that were lost or destroyed before a fishing history was completed. One provision was described above as Exception 3. The other provision, called the ''unavoidable circumstances provision,'' also provides a means for achieving eligibility although the fishing history of a vessel is not complete. The details of the unavoidable circumstances provision were published in the LLP final rule (63 FR 52642, October 1, 1998).

In summary, a person must have a complete fishing history, which must

have been created on a single vessel, with two exceptions. The first exception is for crab licenses. A person can combine a documented harvest of crab species that occurred during the period beginning January 1, 1998, through February 7, 1998, with the fishing history of another vessel that meets the requirements of the GQP and the EQP (see Exception 4 above). The second exception applies to lost or destroyed vessels. Two different provisions implement this exception, the unavoidable circumstances provision for missing documented harvests during the EQP, and Exception 3 for missing documented harvests of crab species during the RPP.

Application Process

Should the Secretary of Commerce approve Amendments 60, 58, and 10, once a final rule has been published NMFS' Restricted Access Management Program (RAM) would implement the application process as follows. Each LLP license holder would be notified of the status of his or her license. License holders for whom RAM has no evidence of qualifications under the crab recent participation qualifications would be informed that they have 60 days to establish such qualifications or lose their license. RAM would request those license holders who qualify to designate the vessel upon which the license is to be used. License holders whose qualifying harvests were made outside of the EEZ (e.g., in Alaska State fisheries) would have their licenses re-endorsed with the name of a qualifying vessel inseparable from the license. As necessary, RAM would add gear designations to the licenses.

License holders would have 60 days to respond to RAM's determinations and would have the right to appeal a determination to the NMFS/Alaska Region Office of Administrative Appeals.

Other Changes Included in This Proposed Rule

The definition of ''Person'' would be changed so that it applies generally to all fishery management programs, including the LLP. This change does not affect the meaning of the definition.

Several paragraphs of the LLP regulations would be revised to eliminate the word ''State'' when referring to waters shoreward of the EEZ off Alaska. The word ''State'' was eliminated because including that word excluded from the LLP several areas shoreward of the EEZ off Alaska that are not State waters. These areas include the waters adjacent to the Metlakatla Indian Reservation and Federal areas reserved off Kodiak Island and Nunivak Island.

A new prohibition would be added specifying that a person cannot use a vessel, or allow a vessel to be used, to fish for license limitation groundfish or crab species, other than the vessel named on the license. This prohibition gives effect to the Council's recommendation to require that a specific vessel must be named on the license.

The eligibility requirements for a Western Gulf area endorsement for vessel length category ''A'' in § 679.4(k)(4)(ii)(C)(1) would be corrected to require one documented harvest in each of any 2 calendar years during the period beginning January 1, 1992, through June 17, 1995. This correction makes the requirement for a Western Gulf area endorsement for vessel length category ''A'' consistent with the Council motion passed in June 1995.

Comments Requested

The Council has submitted Amendments 60, 58, and 10 for Secretarial review, and a notice of availability of the amendments was published January 17, 2001 (66 FR 3976), with comments on the amendments invited through March 19, 2001. Comments received before the end of the comment period for this proposed rule, will not be considered in the approval/disapproval decision of the amendments, but will be considered in context of this proposed rule. The preamble of the final rule will contain a summary of the comments received both on the amendments and on the proposed rule. Copies of Amendments 60, 58, and 10 are available upon request (see **ADDRESSES**).

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

At this time, NMFS has not determined that Amendments 60, 58, and 10 that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA for Amendments 60, 58, and 10 that discusses the impact on the environment as a result of this rule. The analysis indicates that the individual impacts of the proposed changes, and the cumulative impacts of the all the changes, would have a negligible affect on the quality of the human environment. Most proposed changes in this proposed rule either limit participants, or their participation, as compared to the status quo. Allowing limited processing by catcher vessels is not expected to impact the fisheries stock, the physical environment, or non-target species. A copy of the EA is available from NMFS (see **ADDRESSES**).

An IRFA was prepared that describes the impact this proposed rule, if adopted, would have on small entities. The analysis concludes that most persons affected by the proposed actions are small entities given their expected annual gross revenues are less that $3 million or are assumed to be small entities because of insufficient annual receipts data. However, the ownership characteristics of vessels operating in the fishery have not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company due to insufficient data.

The proposed limitation on the transfer of licenses earned on an estimated 447 vessels that never held a Federal Fisheries Permit is intended to limit the potential for increasing fishing effort in the EEZ off Alaska, while allowing small vessels to continue to operate in both State and Federal waters. A person who did not obtain a Federal Fisheries Permit must have fished in the EEZ only incidentally and this action would not affect the ability of such a person to fish in State waters.

The proposed requirement to add gear endorsements to Alaska groundfish licenses is intended to restrict movement between trawl and non-trawl sectors. Council is concerned about excess capital and capacity in the fisheries. The estimated 2,435 affected license recipients are assumed to be small entities. A person's gear endorsement would be based on a history of past participation. A provision is proposed to allow a person to designate a gear type different from the one for which that person qualified, if certain criteria are met.

The exception for CDQ vessels was provided originally to assist the six CDQ organizations to enter the groundfish fisheries. This exception is not being used and is unnecessary because of business partnerships and specific allocations. A provision is proposed that would exempt any vessel from the license requirements of the LLP if a vessel took advantage of the exception prior to October 9, 1998.

The proposed addition of a recent participation requirement for eligibility for an estimated 93 crab license recipients, who are assumed to be small entities, addresses the Council's

concerns that reactivation of latent or unused capacity through transfers would further contribute to excess capacity in the crab fishery. This proposed action is consistent with the intent of the AFA to remove latent capacity in this fishery.

The proposal to allow an estimated 1,902 catcher vessels under 60 ft (18.3 m) LOA to process fish on a limited basis (i.e., 1 mt of round fish per day) would provide increased flexibility for small entities to take advantage of specialized markets and to use certain species of fish that spoil more rapidly than others.

The Council considered and adopted several measures to reduce the impacts on small entities. Rather than disqualifying license recipients who did not have a Federal Fisheries Permit, licenses with limited transferability would be issued to such recipients. A provision would be added to allow a recipient to designate a gear type different from the one for which that license recipient qualified, if meeting certain criteria. Rescinding the CDQ vessel exemption would have no impact on CDQ groups that have not used the CDQ exemption and a provision was added to protect any existing CDQ group from being disadvantaged. In considering the impact on small entities of a recent participation requirement, the Council recommended a period (January 1, 1996-February 7, 1998) that reduced the estimated number of affected small entities from 365 to 272.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 26, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition for ''Person'' is revised to read as follows:

§ 679.2 Definitions.

* * * * *

Person means any individual who is a citizen of the United States, or any corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state, who is a U.S. citizen, except for purposes of High Seas Salmon Fishery permits issued under § 679.4(h), in which case the term ''person'' excludes any nonhuman entity.

3. In § 679.4, paragraphs (k)(2)(iv), (k)(3)(i), (k)(4)(i)(A), (k)(4)(i)(B), (k)(4)(ii), (k)(4)(iv)(A) introductory text, (k)(4)(iv)(B), (k)(4)(v)(A), (k)(4)(v)(B), and (k)(5)(ii) introductory text are revised and paragraphs (k)(3)(ii)(D), (k)(3)(iv), (k)(5)(iii), and (k)(5)(iv) are added to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(2) * * *

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and during the period after November 18, 1992, through October 9, 1998, was specifically constructed for and used exclusively in accordance with a CDP approved by NMFS, and is designed and equipped to meet specific needs that are described in the CDP may conduct directed fishing for license limitation groundfish in the GOA and in the BSAI area without a groundfish license and for crab species in the Bering Sea and Aleutian Islands Area without a crab species license.

(3) *Vessel and gear designations and vessel length categories*--(i) *General.* A license can be used only on a vessel that complies with the vessel designation and gear designation specified on the license and that has an LOA less than or equal to the MLOA specified on the license.

(ii) * * *

(D) *Limited processing by catcher vessels.* Up to 1 mt of round fish per day may be processed on a vessel less than or equal to 60 ft (18.3 m) LOA that is authorized to be used to fish for license limitation groundfish or crab species with a license with a catcher vessel designation.

(iii) * * *

(iv) *Gear designations for groundfish licenses*--(A) *General.* A vessel may only use gear consistent with the gear designation on the license authorizing the use of that vessel to fish for license limitation groundfish or crab species.

(B) *Trawl/non-trawl.* A license will be assigned a trawl/non-trawl gear designation if trawl and non-trawl gear were used on the qualifying vessel during the period beginning January 1, 1988, through June 17, 1995.

(C) *Trawl.* A license will be assigned a trawl gear designation if only trawl gear was used on the qualifying vessel during the period beginning January 1, 1988, through June 17, 1995.

(D) *Non-trawl.* A license will be assigned a non-trawl gear designation if only non-trawl gear was used on the qualifying vessel during the period beginning January 1, 1988, through June 17, 1995.

(E) *Changing a gear designation.*

(*1*) An applicant may request a change of gear designation based on gear used from the vessel during the period beginning June 18, 1995, through February 7, 1998. This requested change can be made in the application for an LLP license. Such a change would be permanent and may only be used for a change from trawl to non-trawl or from non-trawl to trawl.

(*2*) An applicant may request a change of gear designation based on a significant financial investment in converting a vessel or purchasing fishing gear on or before February 7, 1998, and making a documented harvest with that gear on or before December 31, 1998. This requested change can be made in the application for an LLP license. Such a change would be permanent and may only be used for a change from trawl to non-trawl or from non-trawl to trawl.

(F) *Definitions of non-trawl gear and significant financial investment.*

(*1*) For purposes of paragraph (k)(3)(iv) of this section, non-trawl gear means any legal gear, other than trawl, used to harvest groundfish.

(*2*) For purposes of paragraph (k)(3)(iv)(E)(2) of this section, ''significant financial investment'' means having spent at least $100,000 toward vessel conversion and/or gear to change to trawl gear from non-trawl gear, or having acquired groundline, hooks, pots, jig machines, or hauling equipment to change to non-trawl gear from trawl gear.

(4) * * *

(i) * * *

(A) At least one documented harvest of any amount of license limitation groundfish must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (k)(4)(ii)(A) and (k)(4)(ii)(B) of this section. This documented harvest must have been of license limitation groundfish caught and retained in the BSAI or in waters shoreward of the BSAI and must have occurred during the following periods:

* * * * *

(B) At least one documented harvest of any amount of license limitation groundfish must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs

(k)(4)(ii)(C) through (k)(4)(ii)(E) of this section. This documented harvest must have been of license limitation groundfish caught and retained in the GOA or in waters shoreward of the GOA and must have occurred during the following periods:

* * * * *

(ii) Endorsement qualification periods (EQP). A groundfish license will be assigned one or more area endorsements based on criteria in paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(E) of this section.

(A) Aleutian Islands area endorsement. For a license to be assigned an Aleutian Islands area endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel length categories ''A'' through ''C'') during the period beginning January 1, 1992, through June 17, 1995, in the Aleutian Islands Subarea or in waters shoreward of that subarea.

(B) *Bering Sea area endorsement.* For a license to be assigned a Bering Sea area endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel length categories ''A'' through ''C'') during the period beginning January 1, 1992, through June 17, 1995, in the Bering Sea Subarea or in waters shoreward of that subarea.

(C) *Western Gulf area endorsement*--(*1*) *Vessel length category ''A''.* For a license to be assigned a Western Gulf area endorsement based on participation from a vessel in vessel length category ''A'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska on in waters shoreward of that area.

(*2*) *Vessel length category ''B'' and catcher vessel designation.* For a license to be assigned a Western Gulf area endorsement based on participation from a vessel in vessel length ''B'' and that would qualify for a catcher vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel during the period beginning January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in waters shoreward of that area.

(*3*) *Vessel length category ''B'' and catcher/processor vessel designation.* For a license to be assigned a Western Gulf area endorsement based on participation from a vessel in vessel length category ''B'' and that would qualify for a catcher/processor vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in waters shoreward of that area, or at least four documented harvests of any amount of license limitation groundfish during the period beginning January 1, 1995, through June 17, 1995, in the Western Area of the Gulf of Alaska or in waters shoreward of that area.

(*4*) *Vessel length category ''C''.* For a license to be assigned a Western Gulf area endorsement based on participation from a vessel in vessel length category ''C'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel during the period beginning January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in waters shoreward of that area.

(D) *Central Gulf area endorsement*--(*1*) *Vessel length category ''A''.* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category ''A'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, in the Central Area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district.

(*2*) *Vessel length category ''B''.* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category ''B'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, or at least four documented harvests of any amount of license limitation groundfish during the period beginning January 1, 1995, through June 17, 1995. These documented harvests must have occurred in the Central Area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district.

(*3*) *Vessel length category ''C''.* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category ''C'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel during the period beginning January 1, 1992, through June 17, 1995, in the Central Area of the Gulf of Alaska or in waters shoreward of that area, or in the West Yakutat District or in waters shoreward of that district.

(E) *Southeast Outside area endorsement*--(*1*) *Vessel length category ''A''.* For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category ''A'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, in the Southeast Outside District of the Gulf of Alaska or in waters shoreward of that district.

(*2*) *Vessel length category ''B''.* For a license to be assigned a Southeast Outside area endorsement based on participation from a vessel in vessel length category ''B'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any two calendar years during the period beginning January 1, 1992, through June 17, 1995, or at least four documented harvests of any amount of license limitation groundfish during the period beginning January 1, 1995, through June 17, 1995, in the Southeast Outside District of the Gulf of Alaska or in waters shoreward of that district.

(*3*) *Vessel length category ''C''.* For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category ''C'', at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel during the period beginning January 1, 1992, through June 17, 1995, in the Southeast Outside District of the Gulf of Alaska or in waters shoreward of that district.

* * * * *

(iv) * * *

(A) From whose vessel no documented harvests were made in the GOA or waters shoreward of the GOA during the period beginning January 1, 1988, through June 27, 1992, and

(B) From whose vessel no documented harvests were made in the BSAI or waters shoreward of the BSAI during the period beginning January 1, 1992, through June 17, 1995.

(v) * * *

(A) From whose vessel no documented harvests were made in the BSAI or waters shoreward of the BSAI during the period beginning January 1, 1988, through June 27, 1992, and

(B) From whose vessel no documented harvests were made in the GOA or waters shoreward of the GOA during the period beginning January 1, 1992, through June 17, 1995.

* * * * *

(5) * * *

(ii) *Area/species endorsements.* A crab species license will be assigned one or more area/species endorsements specified at § 679.2 based on criteria in paragraphs (k)(5)(ii)(A) through (G) and paragraph (k)(5)(iii) of this section.

* * * * *

(iii) *Recent participation period (RPP).* (A) To qualify for one or more of the area/species endorsements specified at § 679.2, at least one documented harvest of any amount of crab species must have been made from a vessel during the period from January 1, 1996, through February 7, 1998.

(B) *Exceptions to the RPP.* (*1*) A person who only qualifies for an area/species endorsement specified at paragraph (k)(5)(ii)(G) of this section does not need to meet the documented harvest requirements of paragraph (k)(5)(iii) of this section.

(*2*) A person whose qualification for area/species endorsements specified at § 679.2 is based on documented harvests from a vessel length category ''C'' vessel does not need to meet the documented harvest requirements of paragraph (k)(5)(iii) of this section.

(*3*) A person whose vessel meets the documented harvest requirements of paragraphs (k)(5)(i) and (k)(5)(ii) of this section, whose vessel was lost or destroyed during the period from January 1, 1996, through February 7, 1998, and whose replacement vessel made a documented harvest during the period after the vessel was lost or destroyed but before January 1, 2000, does not need to meet the documented harvest requirements of paragraph (k)(5)(iii) of this section.

(iv) *Exception to the complete fishing history earned on one vessel.* A person who can demonstrate that his or her vessel made a documented harvest of crab species during the period from January 1, 1998, through February 7, 1998, and who obtains the fishing history of a vessel that meets the documented harvest requirements of paragraphs (k)(5)(i) and (k)(5)(ii) of this section, or who entered into a contract to obtain the fishing history of a vessel that meets the documented harvest requirements of paragraphs (k)(5)(i) and (k)(5)(ii) of this section by 8:36 am PST on October 10, 1998, is exempted from the requirement of having a complete fishing history earned on one vessel.

* * * * *

4. In § 679.7, paragraph (i)(6) is revised and paragraph (i)(9) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i) * * *

(6) Use a vessel to fish for LLP groundfish or crab species, or allow a vessel to be used to fish for LLP groundfish or crab species, that has an LOA that exceeds the MLOA specified on the license that authorizes fishing for LLP groundfish or crab species.

* * * * *

(9) Use a vessel to fish for LLP groundfish or crab species, or allow a vessel to be used to fish for LLP groundfish or crab species, other than the vessel named on the license that authorizes fishing for LLP groundfish or crab species.

* * * * *

[FR Doc. 01–7941 Filed 3–29–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 62
Friday, March 30, 2001

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

Forest Service

Analysis of Beaver Park Project Area, Black Hills National Forest, South Dakota

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent.

SUMMARY: This notice cancels the Notice of Intent to analyze the Beaver Park Project Area on the Black Hills National Forest, published in the **Federal Register** on November 9, 1999 (64 Fed. Reg. 61063–61064), pursuant to Title 40 Code of Federal Regulations section 1501.7. The project was cancelled as a result of the settlement of Civil Action No. 99–N–2173, *Biodiversity Associates* vs. *Lyle Laverty et al.,* United States District Court for the District of Colorado.

ADDRESSES: Northern Hills Ranger District, Black Hills National Forest, 2014 N. Main St., Spearfish, SD 57783.

FOR FURTHER INFORMATION CONTACT: John Natvig, Project Interdisciplinary Team Leader, at (605) 642–4622.

SUPPLEMENTARY INFORMATION: On March 1, 1999, a Record of Decision was signed implementing the selected alternative in the Veteran Boulder Environmental Impact Statement in the Beaver Park Roadless Area. A separate project was proposed later the same year to address a growing mountain pine beetle epidemic in the Beaver Park area. A Notice of Intent to analyze the effects of the proposed actions was published in the **Federal Register** on November 9, 1999.

On November 10, 1999, Biodiversity Associates filed a lawsuit against Lyle Laverty et al. regarding the March 1, 1999 Record of Decision on the Veteran/Boulder project. An agreement to settle this lawsuit was reached on September 6, 2000. As part of the settlement, the Forest Service agreed not to approve any decision to ''log, or construct or reconstruct vehicle routes, or construct or reconstruct skid trails, or otherwise undertake any activity involving the disturbance of soil or the cutting or damaging of trees, nor will it undertake sale ''prep'' work (*e.g.,* tree marking), within the Beaver Park Roadless Area until after a decision by the Regional Forester to adopt the Phase II Forest Plan amendment'' (*Biodiversity Associates* v. *Laverty,* p. 2).

This language effectively prevents the actions proposed under the Beaver Park Project from occurring until such time as an amendment to the Black Hills National Forest Land and Resource Management Plan is prepared and signed, as described in the settlement agreement. Therefore, the Notice of Intent for the Beaver Park Project is being withdrawn.

Dated: February 28, 2001.

John C. Twiss,

Forest Supervisor.

[FR Doc. 01–7897 Filed 3–29–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section 1 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS state technical guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in Section 4 Practice Standards and Specifications, Conservation Cover (327), Conservation Crop Rotation (328), Contour Buffer Strips (332), Contour Farming (330), and Field Border (386) to account for improved technology. These practice standards can be used in systems that treat highly erodible land.

DATES: Comments will be received until on or before April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, Iowa 50309; at 515/284–4260; fax 515/284–4394.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: March 21, 2001.

Leroy Brown,

State Conservationist.

[FR Doc. 01–7843 Filed 3–29–01; 8:45 am]

BILLING CODE 3410–18–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Second Quarter of 2001

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the second quarter of 2001.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the second calendar quarter of 2001.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning April 1, 2001, and ending June 30, 2001.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Room 4024–S, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–205–3660. FAX: 202–690–0717. E-mail: GSalgado@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the second calendar quarter of 2001 for municipal

rate electric loans. RUS regulations at § 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to § 1714.5, the interest rates on these advances are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the fourth Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in § 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of ''Municipal Market Data—General Obligation Yields'' or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 2001 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under § 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with § 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the second calendar quarter of 2001.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2022 or later	5.125
2021	5.125
2020	5.125
2019	5.125
2018	5.000
2017	5.000
2016	4.875
2015	4.875
2014	4.750
2013	4.625
2012	4.500
2011	4.375
2010	4.250
2009	4.250
2008	4.125
2007	4.000
2006	3.875
2005	3.750
2004	3.625
2003	3.500
2002	3.375

Dated: March 8, 2001.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 01–7957 Filed 3–29–01; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: April 30, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney (703) 603–7740

SUPPLEMENTARY INFORMATION: On July 28, September 15, 2000 and January 25, February 2, February 9 and February 16, 2001 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 46426, 55938) and (66 FR 7875, 8776, 9685/9686 and 10664) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Folder, Classification

7530–00–NIB–0548
7530–00–NIB–0549
7530–00–NIB–0550
7530–00–NIB–0551
7530–00–NIB–0552
7530–00–NIB–0555
7530–00–NIB–0556
7530–00–NIB–0557

Services:

Administrative Services

U.S. Army Space and Missile Defense Command (SMDC), Huntsville, Alabama

Administrative Services for Catalog Distribution

Defense Reutilization and Marketing Service, Battle Creek, Michigan

Food Service Attendant

Air National Guard-Phoenix, 3200 E Old Tower Road, Phoenix, Arizona

Food Service

Naval Air Station, Pensacola, Naval Technical Training Center, Corry Station, Pensacola, Florida

Furnishings Management Services

McGuire Air Force Base, New Jersey

Janitorial/Custodial

FAA Facilities, ARTCC, Guard Shack, ZANNEX Building & ZAN Village, Anchorage, Alaska

Janitorial/Custodial

California Air National Guard, Building 546, Moffett Federal Airfield, California

Janitorial/Custodial

VA Medical Center, Dental Laboratory, Washington, DC

Janitorial/Custodia

≤Great Lakes Naval Training Center, Great Lakes, Illinois

Janitorial/Grounds Maintenance

U.S. Army Reserve Center, 1650 Corey Boulevard, Decatur, Georgia

Mailroom and Records Management Services
U.S. Army Corps of Engineers, Jacksonville, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodities are hereby deleted from the Procurement List:

Commodities

Stepladder

5440–00–
514–4483
5440–00–514–4485
5440–00–514–4487

Patrick T. Mooney,

Director, Pricing and Program Operations.

[FR Doc. 01–7907 Filed 3–29–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

DATES: Comments must be received on or before: April 30, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Flu Detection Kit

6550–00–NIB–0001
6550–00–NIB–0002
NPA: San Antonio Lighthouse, San Antonio, Texas

Frame, Transparency Mounting

6750–00–378–6825
NPA: Industries of the Blind, Inc. Greensboro, North Carolina

Mattress, High Density Lumbar

7210–00–NIB–0060
7210–00–NIB–0061
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina

Administrative/General Support Services

Office of Personnel Management, Inspector General Office, Washington, DC
NPA: Columbia Lighthouse for the Blind, Washington, DC

Heavy Equipment Operation

Camp Bullis, Texas
NPA: Goodwill Industries of San Antonio, San Antonio, Texas

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodity to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List:

Commodity

Handle, Paint Roller

7920–00–682–6512

Patrick T. Mooney,

Director, Pricing and Program Operations.

[FR Doc. 01–7908 Filed 3–29–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Initiation of New Shipper Antidumping Duty Review and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating a new shipper review for Shantou Hongda Industrial General Corporation and Shenxian Dongxing Foods Co., Ltd.

EFFECTIVE DATE: March 30, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136 or (202) 482–4929.

Applicable Statute and Regulations

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 references to the Department of Commerce's (''the Department's'') regulations are to 19 CFR part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2001, the Department received requests from Shantou Hongda Industrial General Corporation (''Shantou Hongda'') and Shenxian Dongxian Foods Co., Ltd. (''Shenxian Dongxing''), pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214, for a new shipper review of the antidumping duty order on certain preserved mushrooms (''mushrooms'') from the People's Republic of China (''PRC''). This order has a February anniversary month. *See Notice of Amendment of Final Determinations of Sales at Less-Than-Fair-Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China,* 64 FR 8308 (February 19, 1999). Therefore, these requests are timely pursuant to 19 CFR 351.214(b)(2)(c).

On March 22, 2001, based on a request from the Coalition for Fair Preserved Mushroom Trade,[1] we initiated an administrative review with respect to Shantou Hongda and Shenxian Dongxian, among other companies. For further discussion, see ''Partial Rescission of Administrative Review'' section, below.

In accordance with 19 CFR 351.214(b)(2)(i) and (iii)(A), Shantou Hongda and Shenxian Dongxing have certified (1) that they did not export mushrooms to the United States during the period of investigation (''POI''); and (2) that, since the investigation was initiated, they never have been affiliated with any exporter or producer who did export mushrooms to the United States during the POI, including those not examined during the investigation. Also, in accordance with 19 CFR 351.214(b)(2)(iv), Shantou Hondga and Shenxian Dongxing submitted documentation establishing (1) the date on which they first shipped the subject merchandise to the United States, (2) the volume of that shipment, and (3) the date of the first sale to an unaffiliated customer in the United States. Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), we are initiating the new shipper review of the antidumping duty order on mushrooms from the PRC.

It is the Department's practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Shantou Hondga and Shenxian Dongxing (including a separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of mushrooms, the review of each new shipper will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI, and the new shipper review of that respondent will be rescinded.

Partial Rescission of Administrative Review

We have confirmed, based on the above-mentioned information and subject to Shantou Hongda and Shexian Dongxing each demonstrating the absence of government control over their export activities, that Shantou Hongda and Shenxian Dongxing are both eligible for a new shipper review. Accordingly, we are rescinding the administrative review previously initiated for these companies. *See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews,* 66 FR 10637 (March 22, 2001).

Initiation of Reviews

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on mushrooms from the PRC. On March 12, 2001, Shantou Hongda and Shenxian Dongxing agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrently with the second annual administrative review of this order, that is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the preliminary results of this review not later than 245 days after the last day of the anniversary month of the order. All provisions of 19 CFR 351.214 will apply to Shantou Hondga and Shenxian Dongxing throughout the duration of this new shipper review.

Antidumping duty proceeding	Period to be reviewed
People's Republic of China: Certain Preserved Mushrooms, A–570–851; ..... Shantou Hongda Industrial General Corporation Shenxian Dongxing Foods Co., Ltd.	02/01/00–1/31/01

Pursuant to 19 CFR 351.214(g)(i)(A), the standard period of review (''POR'') in a new shipper review, which like this one, was initiated in the month immediately following the anniversary month, is the twelve month period immediately preceding the anniversary month. Therefore, the POR for this new

[1] The Coalition includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

shipper review is February 1, 2000, through January 31, 2001.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, until the completion of the review, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by the above-listed companies.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

March 23, 2001.

Richard W. Moreland,

Deputy Assistant Secretary Import Administration.

[FR Doc. 01–7927 Filed 3–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–822]

Initiation of Antidumping Duty Investigation: Oleoresin Paprika From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Karin Ryerson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4794 or (202) 482–3174, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce's (the Department's) regulations are to the provisions at 19 CFR Part 351 (2000).

The Petition

On March 6, 2001, the Department received a petition on imports of oleoresin paprika filed in proper form by Rezolex, Ltd., Co. (referred to hereafter as ''the petitioner''). On March 14, 2001, the Department requested additional information and clarification of certain areas of the petition and received a response on March 19, 2001.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of oleoresin paprika from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act. Furthermore, the petitioner has demonstrated sufficient industry support with respect to the antidumping duty investigation it is requesting the Department to initiate (see ''Determination of Industry Support for the Petition'' below).

Scope of Investigation

The merchandise subject to this investigation consists of oleoresin extracts made from red peppers (generally known as ''oleoresin paprika''), regardless of solvent content or pepper pungency. Other names that refer to this product may include, but are not limited to, paprika oleoresin, oleoresin of paprika, paprika extract, extract of paprika, and ''ORP.'' Manufacturers typically produce oleoresin paprika from the pepper variety called Capsicum Annum L., but they may produce oleoresin paprika from other red pepper varieties. Except as specified below, all products, concentrations, and qualities of oleoresin paprika regardless of pepper source are included in this investigation.

The merchandise subject to this investigation may enter under 1301.90.9090, 1302.19.9040, 3203.00.8000, 3205.00.0500, 3301.90.1010, 3301.90.1050, and 3301.90.5000 of the Harmonized Tariff Schedule of the United States (HTSUS), but these subheadings also cover products that are outside the scope of this investigation. Specifically excluded from the scope of this investigation are any oleoresin extracts of red peppers that have an American Spice Trade Association (ASTA) value of less than 500 ASTA or 20,000 Color Units (500 ASTA $\times$ 40 = 20,000 Color Units) as determined by spectrophotometric measurement. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it accurately reflects the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International

Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, we have adopted the definition of the domestic like product defined in the ''Scope of Investigation'' section, above. That definition was developed in consultation with the petitioner.

The petitioner established industry support representing over 50 percent of total production of the domestic like product. In addition, the Department received no opposition to the petition. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act (see Initiation Checklist, Re: Industry Support).

[1] See *Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate. The anticipated period of investigation is January 1, 2000, through December 31, 2000.

The petitioner identified the following Indian companies as producers of oleoresin paprika in its petition: Akay Flavours & Aromatics, Ltd., Asian Herbex, Ltd., D.V. Deo, Enjay Marketing Services Pvt., Ltd., Enjayes Spices & Chemical Oils, Ltd., Flavours and Essences Pvt., Ltd., Gujarat Packaging, Indoworld Trading Corporation, Kancor Flavours & Extracts Ltd., Paprika Oleo's (India), Ltd., Plant Lipids Ltd., and Synthite Industrial Chemicals Ltd. The petitioner determined export prices for some of these producers based on price quotes obtained by company personnel. All U.S. prices were denominated in U.S. dollars and, where appropriate, the petitioner made adjustments for movement expenses. To support the accuracy of this information the petitioner provided an affidavit from the company official that was responsible for collecting the information. As a result of our review of the petitioner's calculation of certain export prices, we determined that it was necessary to revise certain adjustments for movement expenses (see Initiation Checklist, Re: Less-Than-Fair-Value Allegation).

With respect to normal value, the petitioner stated that it could not find data regarding Indian home-market or third-country prices. In support of its claim that home-market and third-country pricing information is unavailable, the petitioner provided an affidavit from the company official that was responsible for preparing the petition. Lacking Indian home-market or third-country pricing information, the petitioner based normal value on constructed value. Pursuant to section 773(e) of the Act constructed value includes cost of materials and fabrication, selling, general, and administrative expenses, packing, and profit. The petitioner calculated the cost of materials and fabrication, selling, general, and administrative expense, and packing components of constructed value based on its own production experience, using publicly available data to make adjustments for known differences between costs incurred to produce oleoresin paprika in the United States and India. For profit, the petitioner relied upon the financial statements of an Indian oleoresin paprika producer.

Fair Value Comparison

Based on the data provided by the petitioner, there is reason to believe that imports of oleoresin paprika from India are being, or are likely to be, sold in the United States at less than fair value. As a result of the comparison of export prices to normal value, we recalculated estimated dumping margins for imports of oleoresin paprika from India that range from 22.29 percent to 46.75 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that the industry's injured condition is evidenced by the loss of customers, producers leaving the industry, stagnate domestic sales volumes, and declining trends in employment and pricing.

The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Initiation Checklist, Re: Material Injury).

Initiation of Antidumping Investigation

Based upon our examination of the petition on oleoresin paprika from India, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of oleoresin paprika from India are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the

government of India. We will attempt to provide a copy of the public version of the petition to each producer named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than April 20, 2001, whether there is a reasonable indication that imports of oleoresin paprika are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: March 26, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–7928 Filed 3–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Policy Matters (ISAC 3); Continuation of Request for Nominations

AGENCY: International Trade Administration, Trade Development.

ACTION: Continuation of request for nominations.

SUMMARY: The Secretary of Commerce (Commerce) and the United States Trade Representative (USTR) continue to seek nominations for appointment of an environmental representative to the Industry Sector Advisory Committee on Chemicals and Allied Products for Trade Policy Matters (ISAC 3; *see* **Federal Register** notice, Vol. 65, Number 149, 47405–47406, dated August 2, 2000, and **Federal Register** notice, Vol. 65, Number 189, 58264–58265, dated September 28, 2000). Appointment will be effective for the charter term of this Committee, which expires March 17, 2002. In order to be considered for appointment to the Committee, a nominee must be a U.S. citizen, must represent a U.S. organization with an interest in environmental issues relevant to the work of the Committee, and may not be a registered foreign agent under the Foreign Agents Registration Act. Nominees' special interest in and knowledge of environmental, trade and sectoral issues will be considered.

This Notice will remain in effect for the duration of the current charter period; however, priority will be given to nominations received by April 30, 2000. Nominations will be considered as they are received. Recruitment information is available on the International Trade Administration website at *http://www.ita.doc.gov/icp.*

FOR FURTHER INFORMATION CONTACT: Further inquiries may be directed to Ingrid Mitchem, Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 2015–B, Washington, DC 20230 or Christina Sevilla, Acting Assistant USTR for Intergovernmental Affairs, Winder Building, Room 100, 600 17th Street NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background

In section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) of the 1974 Trade Act directs the President to

> seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to:
>
> (A) negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];
>
> (B) the operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and
>
> (C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States * * *

Section 135(c)(2) of the 1974 Trade Act provides—

> (2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—
>
> (A) consult with interested private organizations; and
>
> (B) take into account such factors as—
>
> (i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,
>
> (ii) the character of the nontariff barriers and other distortions affecting such competition,
>
> (iii) the necessity for reasonable limits on the number of such advisory committees,
>
> (iv) the necessity that each committee be reasonably limited in size, and
>
> (v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-chair seventeen Industry Sector Advisory Committees (ISACs) and four Industry Functional Advisory Committees (IFACs). The Committees' efforts have resulted in strengthening U.S. negotiating positions by enabling the United States to display a united front when it negotiates trade agreements with other nations. This committee has a past practice of meeting on a monthly basis. Members serve without compensation and are responsible for all expenses incurred in attending committee meetings. For additional information regarding the functions and membership of this committee and general qualifications for membership, *see* 64 FR 10448–10449, March 4, 1999 (Volume 64, Number 42). Commerce and USTR now solicit nominations for qualified environmental representatives to serve on ISAC 3 (Chemicals and Allied Products). For further background regarding this solicitation, *see* **Federal Register** notice, Vol. 65, Number 149, 47405–47406, dated August 2, 2000, and **Federal Register** notice, Vol. 65, Number 189, 58264–58265, dated September 28, 2000).

Eligibility

Eligibility to serve as an environmental representative on ISAC 3 is limited to U.S. citizens who are not full-time employees of a governmental entity, who represent a ''U.S. entity'' that is an organization interested in environmental issues relevant to the work of the committee, and who are not registered with the Department of Justice under the Foreign Agents Registration Act. For purposes of the preceding sentence, a ''U.S. entity'' is an organization incorporated in the United States (or, if unincorporated, having its headquarters in the United States):

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent

of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) At least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

Selection Criteria

USTR and Commerce will select an environmental representative eligible for appointment to ISAC 3 based upon the following:

(1) The organization to be represented will be considered based on environmental interest in trade policies in the sector relevant to the work of the committee.

(2) The nominee should demonstrate personal interest in and knowledge of the formulation of environmental policies in the sector relevant to the work of the Committee, and ability to work with governmental officials and industry representatives to reach consensus on complex environmental and trade issues affecting the relevant industry sector.

(3) Preference will be accorded nominees who also demonstrate knowledge of and familiarity with the relevant industry sector, as well as with international trade matters, including trade policy development, relevant to that sector.

The environmental representative, as a member of the Committee, will be required to have a security clearance. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings.

Application Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, DC 20230.

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: March 26, 2001.

Jonathan C. Menes,

Acting Assistant Secretary for Trade Development.

[FR Doc. 01–7930 Filed 3–29–01; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including: An end-pumped waveguide optical splitter amplifier based on self-imaging, a high-gain, dielectic loaded, slotted waveguide antenna, a lead-acid battery life extender, and a phased array RADAR system.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices covered by these patents.

Title: Battery Life Extender with Engine Heat.

Inventors: Carl Campagnuolo, James J. Chopack and Jonathan E. Fine.

Patent Number: 6,172,486.

Issued Date: January 9, 2001.

Title: Radar System Having a Ferroelectric Phased Array Antenna Operating with Accurate, Automatic Environment-Calibrated, Electronic Beam Steering.

Inventors: Dale M. DiDomenico, William C. Drach and Thomas E. Koscica.

Patent Number: 6,172,642.

Issued Date: Janaury 9, 2001.

Title: High-Gain, Dielectric Loaded, Slotted Waveguide Antenna.

Inventors: Louis J. Jasper, Joseph R. Miletta and George Merkel.

Patent Number: 6,175,337.

Issued Date: January 16, 2001.

Title: End-Pumped Waveguide Optical Splitter-Amplifiers Based on Self-Imaging.

Inventors: David M. Mackie.

Patent Number: 6,178,276.

Issued Date: January 23, 2001.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197. Telephone: (301) 394–2952 or Fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–7918 Filed 3–29–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United states of America as represented by the Secretary of the Army, Washington, DC.

This patent covers a wide variety of technical arts including: A fold-out fin for an artillery projectile with a low drag configuration which avoids adverse aerodynamic behavior.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices covered by these patents.

Title: Fold-out Fin.

Inventors: Lyle D. Kayser and T. Gordon Brown.

Patent Number: 6,168,111.

Issued Date: January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055. Telephone: (410) 278–5028 or Fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–7917 Filed 3–29–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the East Cliff Drive Bluff Stabilization and Parkway Project

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The San Francisco District and the County of Santa Cruz, California intend to prepare a combined EIR/EIS to support a cost shared project for the stabilization of a stretch of coastal bluff and development of a parkway. This document will fulfill requirements under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The project area is located within the Pleasure Point area, an unincorporated coastal residential neighborhood located midway between the cities of Santa Cruz and Capitola, California. The project is located on and adjacent to East Cliff Drive, from and including the Pleasure Point Overlook Park site located on the southeast corner of the intersection of East Cliff Drive and 32nd Avenue/Pleasure Point Drive (32nd Avenue becomes Pleasure Point Drive on the south side of East Cliff Drive) to ''The Hook'' park site located on the south side of East Cliff Drive at the south end of 41st Avenue. The seawall runs only from 32nd Avenue to 36th Avenue, with a smaller portion being constructed along the bluff area at the end of 41st Avenue.

FOR FURTHER INFORMATION CONTACT: Questions and comments can be directed to Ms. Linda Ngim either by telephone at (415) 977–8538, by fax at (415) 977–8695, or by mail at the address below.

SUPPLEMENTARY INFORMATION:

1. *Purpose.* The purpose of this project is to prevent further erosion of the bluff face, which endangers the roadway, utility lines and homes, and potentially impedes public access to coastal resources. Proposed projects include the seawall (soil-nail wall) plan roadway and parkway improvements, a pedestrian and bike path, and landscaping. Alternatives to be evaluated include; groins, rock revetments, partial bluff stabilization, and the no project alternative plan. There is also a possibility of changing the direction of traffic in the project area along East Cliff Drive from the eastbound to the westbound direction. The EIR/EIS will analyze impacts on the environment on these alternatives, including the recommended plan. The Army Corps of Engineers and the County of Santa Cruz intends to prepare an EIR/EIS to assess the environmental effects associated with the proposed project. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

2. *Scoping.* The Army Corps of Engineers and the County of Santa Cruz will hold a scoping meeting on April 12, 2001 at the Simpkins Swim Center, 979 17th Avenue in Santa Cruz, California 94062 from 7:30 p.m. to 9:00 p.m. Federal, State and Local agencies are invited to participate at the public meeting or by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information for submittal includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and mitigation measures associated with the proposed action. Comments and suggestions as well as requests to be placed on the mailing list for announcements and for the Draft EIR/EIS should be sent to Ms. Linda Ngim, U.S. Army Corps of Engineers, San Francisco District, 333 Market Street, 7th Floor (CESPN–ET–PP), San Francisco, California, 94105–2197.

3. *Availability of the Draft EIR/EIS.* The Draft EIR/EIS is expected to be published in the late Spring of 2001, and a public hearing to receive comments on the Draft EIR/EIS will be held after it is published.

Dated: March 23, 2001.

Timothy S. O'Rourke,

Lt. Colonel, Corps of Engineers, District Engineer.

[FR Doc. 01–7916 Filed 3–29–01; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATES: The meeting will be held from 1:30 to 4:30 p.m. on Tuesday, April 24, 2001.

ADDRESSES: The meeting will be in room 3M65–66, 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558.

SUPPLEMENTARY INFORMATION: The Board advises the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. This meeting will include brief presentations of current issues and discussion of future meeting topics.

In order to facilitate access to 441 G Street, NW., interested parties are requested to notify our office (above address) in writing at least five days prior to the meeting of their intent to attend.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–7915 Filed 3–29–01; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–10–000]

Bay Gas Storage Company, Ltd.; Notice of Petition for Rate Approval

March 26, 2001.

Take notice that on March 9, 2001, Bay Gas Storage Company, Ltd. (Bay Gas) filed, pursuant to section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $1.7282 per MMBtu for firm transportation service, and a maximum rate of $0.0568 per MMBtu for interruptible transportation service, on Bay Gas's new Whistler spur under section 311 of the Natural Gas Policy Act of 1987.

Bay Gas states that it does not choose to make an election under section 284.123(b)(1) and instead applies for Commission approval of the transportation-only rates proposed here. 18 CFR 284.123(b)(2).

Pursuant to Section 284.123(b)(2), if the Commission does not act within 150 days of the filing date, these rates will

be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford interested parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must 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 motions must be filed with the Secretary of the Commission on or before April 10, 2001. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.200(a)(1)(iii) and the instruction on the Commission's web site at *http://www.ferc.fed.us.efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–7853 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–274–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 26, 2001.

Take notice that on March 21, 2001, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective April 1, 2001:

Forty-Seventh Revised Sheet No. 8A.
Thirty-Ninth Revised Sheet No. 8A.01
Thirty-Ninth Revised Sheet No. 8A.02
Forty-Third Revised Sheet No. 8B
Thirty-Sixth Revised Sheet No. 8B.01

FGT states that on February 22, 2001, FGT filed in Docket No. RP01–234–000 to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 2.90% to become effective for the six-month Summer Period beginning April 1, 2001 reflecting FGT's actual fuel usage and unaccounted for gas during the immediately preceding Summer Period. The February 22, 2001 filing was accepted by the Commission Order dated March 19, 2001. FGT states that it is filing a flex adjustment of (0.50)% to be effective April 1, 2001, which, when combined with the Base FRCP of 2.90% results in an Effective Fuel Reimbursement Charge Percentage of 2.40%. FGT is filing this flex adjustment to reflect the lower fuel usage currently being experienced on its system.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment concurrently with the instant filing.

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 section 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, protests, and interventions 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.*

David P. Boergers,

Secretary.

[FR Doc. 01–7857 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–225–001]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

March 26, 2001.

Take notice that on March 19, 2001, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective March 1, 2001.

Substitute Original Sheet No. 1416
Substitute Original Sheet No. 2902
Substitute Original Sheet No. 2903
Substitute Original Sheet No. 2904
Substitute Original Sheet No. 2905
Sheet Nos. 2906–3299 Reserved

In its Order Accepting Tariff Sheets Subject to Conditions, issued on March 2, 2001, in Docket No. RP01–225, the Commission required Gulf South to make a compliance filing incorporating certain changes to its initial tariff filing. This compliance filing incorporates those changes to the appropriate tariff sheets.

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, protests and interventions 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.*

David P. Boergers,

Secretary.

[FR Doc. 01–7855 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1159–000]

MidAmerican Energy Company; Notice of Issuance of Order

March 26, 2001.

MidAmerican Energy Company (MidAmerican) submitted for filing a rate schedule under which MidAmerican will engage in wholesale electric power and energy transactions at market-based rates. MidAmerican also requested waiver of various Commission regulations. In particular, MidAmerican requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MidAmerican.

On March 20, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MidAmerican 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).

Absent a request to be heard in opposition within this period, MidAmerican is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of MidAmerican's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 19, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions 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.*

David P. Boergers,

Secretary.

[FR Doc. 01–7849 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–273–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

March 26, 2001.

Take notice that on March 21, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Second Revised Sheet No. 414, with an effective date of April 20, 2001.

Natural states that the purpose of this filing is to update its list of non-conforming agreements by including a Discount Rate Agreement with Green Valley Chemical Corporation under Natural's Rate Schedule FTS.

Natural states that it is concurrently tenders for filing under separate cover letter in this docket, copies of the Firm Transportation Rate Discount Agreement and the associated Rate Schedule FTS service agreement.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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, protests, and interventions 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.*

David P. Boergers,

Secretary.

[FR Doc. 01–7856 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–007]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 26, 2001.

Take notice that on March 21, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective March 1, 2001:

Thirty-Seventh Revised Sheet No. 10
Twentieth Revised Sheet No. 10A
Third Revised Sheet No. 10A.01
Second Revised Sheet No. 10A.02
Thirty-Third Revised Sheet No. 11
Twenty-First Revised Sheet No. 11B
Fourth Revised Sheet No. 11C
Third Revised Sheet No. 11D
Thirty-Fifth Revised Sheet No. 12
Third Revised Sheet No. 12.01
Fifteenth Revised Sheet No. 13
Fourth Revised Sheet No. 13A
Fourteenth Revised Sheet No. 15
Fifteenth Revised Sheet No. 16
Fourteenth Revised Sheet No. 17
Ninth Revised Sheet No. 18

Texas Gas, Commission Staff, and other parties have participated in a number of settlement conferences to attempt to settle the RP00–260 rate proceeding and avoid a formal hearing. As a result of the conferences, Texas Gas, Commission Staff, and all parties were able to reach an agreement in principle with regard to the total cost of service. While such agreement is contingent upon resolution of certain remaining cost allocation and rate design issues before a proposed stipulation and agreement can be filed, Texas Gas has agreed, as a part of such cost of service agreement, to file a motion to implement interim reduced base tariff rates on a month-to-month basis, pending further settlement discussions.

Accordingly, Texas Gas is filing to place into effect on March 1, 2001, the

tariff sheets listed above. These sheets and the reduced base rates set forth are proposed to go into effect March 1, 2001, and are to remain in effect on a month-to-month basis pending continuation of settlement negotiations in the captioned proceeding. In the event such settlement negotiations are not successful Texas Gas reserves the right, and requests authority, to withdraw such interim reduced rates and to prospectively reinstate the motion rates at any time by filing with the Commission to withdraw such interim reduced rates. If Texas Gas files to withdraw such interim reduced rates, such rates shall be withdrawn and the motion rates shall be reinstated effective the first day of the month after such filing is made. This filing is expressly conditioned upon receipt of such authority to reinstitute the motion rates as described above.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

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, protests and interventions 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.*

David P. Boergers,

Secretary.

[FR Doc. 01–7854 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1340–001, et al.]

Black Hills Corporation, et al., Electric Rate and Corporate Regulation Filings

March 22, 2001.

Take notice that the following filings have been made with the Commission:

1. Black Hills Corporation, n/k/a Black Hills Power, Inc.

[Docket No. ER01–1340–001]

Take notice that on March 16, 2001, Black Hills Corporation, n/k/a Black Hills Power, Inc., tendered for filing a redesignated individual long-term service agreement with Public Service Company of Colorado under Black Hills' Market-Based Rate Wholesale Power Sales Tariff, FERC Electric Tariff, Original Vol. No. 3.

Comment date: April 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. The Detroit Edison Company DTE Energy Trading, Inc.

[Docket No. ER01–1572–000]

Take notice that on March 19, 2001, The Detroit Edison Company (Detroit Edison) and DTE Energy Trading, Inc. filed an application requesting modification of the Code of Conduct, modification of Detroit Edison's market-based wholesale power tariff, FERC Electric Tariff, Original Volume No. 3, and acceptance of Detroit Edison and DTE Energy Trading, Inc. service agreements.

A copy of the application has been served upon the Michigan Public Service Commission.

Comment date: April 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Company

[Docket No. ER01–1573–000]

Take notice that on March 19, 2001, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Network Integration Transmission Service to the Ashland Municipal Electric Department under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the Ashland Municipal Electric Department.

NUSCO requests that the Service Agreement become effective April 1, 2001.

Comment date: April 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER01–1574–000]

Take notice that on March 19, 2001, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Network Integration Transmission Service to the New Hampton Village Precinct under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to the New Hampton Village Precinct.

NUSCO requests that the Service Agreement become effective April 1, 2001.

Comment date: April 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER01–1575–000]

Take notice that on March 19, 2001, PECO Energy Company (PECO) filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated March 16, 2001 with Minnesota Municipal Power Authority (MMPA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 16, 2001, for the Agreement.

PECO states that copies of this filing have been supplied to Minnesota Municipal Power Agency and to the Pennsylvania Public Utility Commission.

Comment date: April 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–1576–000]

Take notice that on March 19, 2001, Alliant Energy Corporate Services, Inc. tendered for filing executed Service Agreements with Alliant Energy Corporate Services, Inc. establishing as a Long-Term Firm Point-to-Point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of January 1, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: April 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. American Transmission Company

[Docket No. ER01–1577–000]

Take notice that on March 19, 2001, American Transmission Company LLC (ATCLLC) tendered for filing proposed changes to its Open Access Transmission Tariff to revise its formula rate to implement revise billing and payment provisions. ATCLLC requests an effective date of June 1, 2001.

Comment date: April 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER01–1590–000]

Take notice that on March 19, 2001, Florida Keys Electric Cooperative Association, Inc. tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

A copy of this filing has been served on CES and the Florida Public Service Commissioner.

Comment date: April 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER01–1401–001]

Take notice that on March 15, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted additional information in order to clarify, correct and expand certain points raised in the filing relating to the implementation of three-part bidding and Net Commitment Period Compensation. The additional information did not change the filing, nor the requested July 1, 2001 effective date.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. NEO California Power LLC

[Docket No. ER01–1558–000]

Take notice that on March 15, 2001, NEO California Power LLC, a limited liability corporation organized under the laws of the State of Delaware, filed, under section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates within the California Independent System Operator Corporation (Cal ISO); and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority. NEO California also filed under FPA section 205 Summer Reliability Agreements with the Cal ISO for NEO California's Chowchilla and Red Bluff projects.

Comment date: April 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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). Comments, protests, and interventions 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.

David P. Boergers,

Secretary.

[FR Doc. 01–7848 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–83–005, et al.

NSTAR Services Company, Electric Rate and Corporate Regulation Filings

March 23, 2001.

Take notice that the following filings have been made with the Commission:

1. NSTAR Services Company v. New England Power Pool; ISO New England, Inc.

[Docket Nos. EL00–83–005; ER00–2811–005; ER00–2937–003; EL00–62–023; and ER00–2052–010]

Take notice that on March 19, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted revisions to its Market Rules in response to requirements of the Commission's July 26, 2000 order in Docket Nos. EL00–83–000, EL00–83–001, ER00–2811–000, ER00–2811–001, ER00–2937–000, EL00–62–000 and ER00–2052–000. New England Power Pool, 92 FERC 61,065 (2000). NEPOOL has requested an effective date of May 18, 2001.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: April 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Point Arquello Pipeline Company

[Docket Nos. EL01–54–000 and QF84–486–001]

Take notice that on March 15, 2001, Point Arquello Pipeline Company, a California general partnership with its principal place of business at 17100 Calle Mariposa Reina, Goleta, California, 93117, filed in the above-captioned docket, pursuant to 18 CFR 292.205(c), a petition for a limited waiver of the efficiency standard set forth in 18 CFR 292.205(a)(2)(i)(A).

Comment date: April 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER01–1579–000]

Take notice that on March 20, 2001, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 38 to the ISO Tariff. The ISO states that Amendment No. 38 is intended modify the ISO Tariff in two respects. First, Amendment No.

38 would allow the ISO to suspend the Load underscheduling penalty from January 1, 2001 through May 31, 2001. Second, Amendment No. 38 would modify the Imbalance Energy Market to allow energy from contingency-only operating reserves to be separated (or ordered) in real time Energy procurement from Operating Reserve energy that can be used for real time imbalance in the real time Imbalance Energy market (or BEEP) Stack.

The ISO requests waiver of the Commission's notice requirements and an effective date for the suspension of the underscheduling penalty of January 1, 2001.

The ISO states that this filing has been served on the California Public Utilities Commission and all California ISO Scheduling Coordinators.

4. Southern California Edison Company

[Docket No. ER01–1578–000]

Take notice, that on March 20, 2001, Southern California Edison Company (ASCE) tendered for filing the Mountain View 1 Project Expedited Service and Interconnection (Agreement) between SCE and Mountain View Power Partners, LLC.

SCE requests that the Agreement will become effective on March 21, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Mountain View Power Partners, LLC.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Southwest Power Pool, Inc.

[Docket No. ER01–1580–000]

Take notice that on March 20, 2001, Southwest Power Pool, Inc. (SPP) tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service, and Loss Compensation Service with Axia Energy, LP, Conoco Gas & Power Marketing, a Division of Conoco Inc., and Split Rock Energy LLC (collectively, Transmission Customers). SPP seeks an effective date of March 1, 2001 for each of these service agreements.

Copies of this filing have been served on each of the Transmission Customers.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER01–1581–000]

Take notice that on March 20, 2001, the California Independent System Operator Corporation (ISO) tendered for filing for informational purpose the Summer Reliability Agreement of NRG Energy Center Round Mountain LLC, a non-jurisdictional Generating Facility, that has contracted with the ISO to provide new generation to the ISO for reliability purposes during summer periods. The agreement became effective as of the date it was executed.

The ISO states that this filing has been served upon the California Public Utilities Commission, the California Energy Commission, and the California Electricity Oversight Board.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER01–1582–000]

Take notice that on March 20, 2001, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Service Agreement with WE Power Marketing providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER01–1583–000]

Take notice that on March 20, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed transmission service agreement with The Cincinnati Gas and Electric Company, PSI Energy, Inc. (collectively Cinergy Operating Companies) and Cinergy Services, Inc. as agent for and on behalf of the Cinergy Operating Companies. This agreement allows The Cinergy Operating Companies and its agent Cinergy Services, Inc. to take firm point-to-point transmission service from LG&E/KU.

The point of receipt is CINERGY and the point of delivery is TVA. (OASIS #69515860 and OASIS #69515854)

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, (Allegheny Power)

[Docket No. ER01–1584–000]

Take notice that on March 20, 2001, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement Nos. 347 and 348 to add Axia Energy, LP to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is March 19, 2001 or a date ordered by the Commission.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Exelon Generation Company, LLC

[Docket No. ER01–1585–000]

Take notice that on March 20, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a service agreement for wholesale power sales transactions between Exelon Generation and Orion Power MidWest, L.P. under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER01–761–001]

Take notice that on March 20, 2001, Southern California Edison Company (SCE) tendered for filing revised rate sheets to its Transmission Owner Tariff in compliance with the Commission's order in this docket dated February 21, 2001 (94 FERC ¶ 61,153).

Copies of this filing were served upon the parties whose names appear on the official service list compiled for this docket.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket Nos. ER01–678–000 and ER01–678–001]

Take notice that on March 20, 2001, Wisconsin Electric Power Company (Wisconsin Electric) submitted a letter to the Federal Energy Regulatory Commission withdrawing its filings in Docket Nos. ER01–678–000 and ER01–678–001. The withdrawal was made because the submissions in Docket Nos. ER01–678–000 and ER01–678–001 long-term service agreements for firm transmission service were filed by Wisconsin Electric, and accepted for filing by the Federal Energy Regulatory Commission, in Docket No. ER01–710–000.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket Nos. ER95–112–012; ER96–586–007 (Not consolidated)]

Take notice that on March 20, 2001, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc., Entergy Louisiana, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing in the above-captioned dockets its Order No. 614 compliance Open Access Transmission Tariff.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Southwest Power Pool, Inc.

[Docket No. ER01–1070–001]

Take notice that on March 20, 2001, Southwest Power Pool, Inc. (SPP) tendered for filing certain information intended to supplement its January 26, 2001 filing in Docket No. ER01–1070.

Comment date: April 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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). Comments, protests, and interventions 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.*

David P. Boergers,

Secretary.

[FR Doc. 01–7847 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11886–000.

c. *Date filed:* February 12, 2001.

d. *Applicant:* Western Land Investments, Inc.

e. *Name of Project:* River Side Project.

f. *Location:* On the Snake River—Boulder Rapids Reach, in Twin Falls and Gooding Counties, Idaho. No federal land or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–824(r).

h. *Applicant Contact:* Mr. Robert Jones, Western Land Investments, Inc., 1766 Addison Avenue East, Twin Falls, ID 83301, (208) 733–0404.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 first Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed 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.* Please include the project number (P–11886–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 320-foot-long, 12-foot-high earthen diversion structure (wetlands peninsula) and would have a negligible impoundment; (2) a proposed 2,331-foot-long, 90-foot-wide, 14-foot-deep canal; (3) a proposed powerhouse containing four generating units having a total installed capacity of 4.9 MW; (4) a proposed 2,200-foot-long 138 kV transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 25.3 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Commtents*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–7851 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

March 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

Type of Application: Preliminary Permit.

b. *Project No.:* 11899–000.

c. *Date filed:* March 2, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Mason Dam Project.

f. *Location:* On the Powder River, in Baker County, Oregon. Would utilize the existing Bureau of Reclamation's Mason Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, Id 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, and protests may be electronically filed 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.* Please include the project number (P–11899–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the Bureau of Reclamation's Mason dam and impoundment would consist of: (1) A proposed intake structure (2) a proposed 200-foot-long, 6-foot-diameter steel penstock; (4) a proposed powerhouse containing one generating unit having an installed capacity of 2 MW; (5) a proposed mile-long, 15 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 12 GWh that would be sold to a local utility.

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm.* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later then 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit

application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILED COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ≥MOTION TO INTERVENE, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Federal Energy Regulatory Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of agency's comments must also be sent to the Applicant's representatives.

David P. Boegers,

Secretary.

[FR Doc. 01–7852 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

March 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No.:* 2899–099.

c. *Date Filed:* March 19, 2001.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Milner Hydroelectric Project.

f. *Location:* The Milner hydroelectric project is located on the Snake River in Twin Falls and Cassia Counties, Idaho. The project includes 109 acres of land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Nathan F. Gardiner, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, Idaho 83707; (208) 388–2676.

i. *FERC Contact:* Questions about this notice can be answered by Kenneth Hogan at (202) 208–0434 or e-mail address: *Kenneth.Hogan@ferc.fed.us.* The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. *Deadline for filing comments, terms and conditions, motions to intervene, and protests:* 14 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms and conditions, protests and interventions 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.*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Idaho Power Company (IPC) filed an application to temporarily waive, for one year, the minimum flow requirement set forth in Article 407 to help lessen the impacts due to the ongoing power shortage and increases in energy costs. Article 407 reads as follows:

> The licensee shall discharge from Milner Dam a target flow of 200 cubic feet per second as measured at the Milner gage located in the bypass reach. The licensee shall release water from the Idaho Water Bank and/or make releases from upstream storage controlled by the licensee to provide the necessary flow to achieve the 200-cfs target. The main powerhouse shall not operate during any time the target flow is not met. The target flow may be temporarily reduced if required by operating emergencies beyond the control of the licensee or for short periods upon mutual agreement between the licensee and Idaho Department of Fish and Game.

At the end of 1 year, Idaho Power would again evaluate energy conditions in Idaho and other western states to determine if a longer waiver is necessary.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in

accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–7858 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No.:* 18–063.

c. *Date Filed:* March 15, 2001.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Twin Falls Project.

f. *Location:* The Twin Falls Project is on the Snake River in Jerome and Twin Falls Counties, Idaho. The project includes 93 acres of land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Nathan F. Gardiner, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707; (208) 388–2676.

i. *FERC Contact:* Question about this notice can be answered by John Smith at (202) 219–2460 or e-mail address: *john.smith@ferc.fed.us.* The Commission cannot accept comments, recommendations, motions to intervene or protest sent by e-mail; these documents must be filed as described below.

j. *Deadline for filing comments, terms and conditions, motions to intervene, and protests:* 14 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions 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.*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, it an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Idaho Power Company (Idaho Power) filed an application seeking a 1-year waiver of aesthetics flows over Twin Falls required by license article 410 to help lessen the impacts due to the ongoing power shortage and increases in energy costs. Article 410 reads as follows:

> After completion of construction of the new powerhouse, the licensee shall maintain flows that average 300 cubic feet per second (cfs) over Twin Falls from 8 a.m. to 30 minutes after sunset each day, 7 days a week, April 1 through August 31, and 8 a.m. to 30 minutes after sunset every Saturday and Sunday and on all holidays, September 1 through March 31 (peak viewing times). At no time during these peak viewing times shall the flow over Twin Falls fall below 270 cfs or inflow, whichever is less. The average flow of 300 cfs required during peak viewing time may be temporarily modified if required by operating emergencies beyond the control of the licensee or for short periods upon agreement between the licensee, the Bureau of Land Management, the Idaho Department of Parks and Recreation, and the Idaho State Historic Preservation Officer.
>
> Until completion of construction of the new powerhouse the licensee shall maintain flows over the falls that average 300 cfs, or inflows less than 200 cfs, during peak viewing times. Plant flows shall be reduced by 8 a.m. to allow gradual reservoir surcharging to accomplish this bypass flow.

Idaho Power proposes to spill water over Twin Falls if it is needed to meet the state water quality standard for dissolved oxygen as required by license article 404. At the end of 1 year, Idaho Power would again evaluate energy conditions in Idaho and other western states to determine if a longer waiver is necessary.

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–7859 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–47–000]

Hydroelectric Power Component—Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United Sates; Notice of Public Meetings

March 26, 2001.

In light of the recent and potential future severe electric energy shortages in the western states, the Federal Energy Regulatory Commission (Commission) issued a March 14, 2001 Order Removing Obstacles To increased Electric Generation and Natural Gas Supply in The Western United States. In this Order, the Commission announces certain actions it is taking within its regulatory authorities under the Federal Power Act to help increase electric generation supply at non-Federal hydroelectric projects in the Western United States. The Commission set forth a number of proposals that would be taken into consideration until December 31, 2001.

The Commission urges all non-Federal hydroelectric licensees in the Western Systems Coordinating Council to immediately examine their projects and propose any efficiency modifications that may increase generation. The licensees are asked to detail to the Commission any environmental impacts, including impacts from changes to discretionary operations, that could occur if there are changes resulting from proposed efficiency modifications.

Where operations of hydroelectric facilities would affect flow-dependent environmental resources, the Commission's licenses include operating constraints, such as requirements for minimum stream flow, minimum reservoir fluctuation, run-of-river operating mode, ramping rates, and flood control. While these operating constraints act to reduce the energy production, peaking capacity, and other power benefits, they also serve to protect resources including resident and anadromous fish, water quality, recreation, municipal and industrial water supplies, and agricultural resources. Modification of these operational constraints has the potential to increase generation from existing hydroelectric facilities and provide additional power during peak-load periods.

Any proposal to increase generation would need to be reviewed to minimize impacts to environmental resources and the level of inconvenience that users of hydropower facilities may experience. Before making changes to specific project licenses, the Commission would need to work closely with licensees, resource agencies and other to identify opportunities for increased power generation while minimizing impacts.

In order to explore ways to expedite review of the licensees' proposals for increased generation, Commission staff will conduct two public meetings in Oregon and California. These meetings will take place at the following dates and locations:

Meeting Dates and Addresses.

(1) Monday, April 9, 2001, at Airport Holiday Inn, 8439 NE Columbia Boulevard, Portland, Oregon

(2) Tuesday, April 10, 2001, at Vagabond Executive, 2030 Arden Way, Sacramento, California

Both meetings will commence at 9 a.m. The objective of each meeting would be to develop methods for expeditiously processing proposals to increase power generation consistent with environmental protection.

For further information, please contact Lon Crow at the Commission, 202–219–2651.

David P. Boergers,

Secretary.

[FR Doc. 01–7850 Filed 3–29–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6616–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–FHW–F40391–MI Rating EC2, M–24 Reconstruction Project, From One Mile North of the Oakland County Line to I–69, Funding, Lapeer County, MI.

Summary: EPA expressed environmental concerns regarding the evaluation of the alternatives and wetland mitigation, and requested the additional information be included in the final EIS.

ERP No. D–NPS–L65368–WA Rating LO, Mount Rainier National Park General Management Plan, Implementation, Pierce and Lewis Counties, WA.

Summary: EPA expressed lack of concerns, however we provided comments which may help in addressing the goals of the Class I airshed and maintaining and preserving the Park's interior forest integrity.

Final EISs

ERP No. F–FHW–C40148–NY, Miller Highway Project (P.I.N. 103.27), Relocation of Miller Highway between West 59th Street to West 72nd Streets, on the Upper West Side of Manhattan, Funding and COE Section 404 Permit, New York County, NY.

Summary: The plan to characterize more adequately the nature and extent of contamination at the site and apply the appropriate remediation measure to contaminated excavated soil in consultation with the EPA and NYSDEC prior to the implementation of the project addressed the concern expressed in EPA's the comments on the draft EIS. EPA recommended that the commitment be included in the Record of Decision.

ERP No. FS–NPS–E61073–MS, Natchez Trace Parkway, Update Information on the Construction of Section 3P13 (Old Agency Road), City of Ridgeland, Madison County, MS.

Summary: EPA continues to express environmental concerns with wetland impact mitigation, compensation plan and plan implementation.

Dated: March 27, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–7945 Filed 3–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6616–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/oeca/ofa*

Weekly receipt of Environmental Impact Statements

Filed March 19, 2001 Through March 23, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010094, Draft EIS, NRS, WV, Upper Tygart Valley River Watershed Plan, Water Supply Project, Approval and Funding, Randolph and Pocahontas Counties, WV, Comment Period Ends: May 14, 2001, Contact: William J. Hartman (304) 284–7545.

EIS No. 010095, Draft EIS, AFS, CO, Nucla-Telluride Transmission Line Project, Permit Approval and Funding for Construction and Operation of a 115 kV Transmission Line between the Nucla Substation in Montrose County and either the Tulluride or Sunshine Substations in Miguel County, CO, Comment Period Ends: May 14, 2001, Contact: Steve Wells (970) 327–4261.

EIS No. 010096, Final EIS, FHW, VA, Hampton Roads Crossing Study, Improvements to Relieve Congestion at the I–64 Hampton Roads Bridge Tunnel, I–64 & I–664 Interchange, Hampton; I–64 and I–564 Interchange, Norfolk; VA–164 near Coast Guard Boulevard, Portsmouth; & I–66, I–264 and I–664 Interchange, Chesapeake, Funding, Coast Guard/COE Permits, Isle of Wight & York Cos. VA, Wait Period Ends: April 30, 2001, Contact: Ed Sunda (804) 775–3338.

EIS No. 010097, Draft Supplement, DOE, SC, Savannah River Site Salt Processing Alternatives, Evaluation for Separating High-Activity and Low-Activity Fractions of Liquid High-Level Radio-active Waste and Potential Environmental Impacts of Alternatives to the In-Tank-Precipitation Process (ITP), Aiken and Barnwell Counties, SC, Comment Period Ends: May 14, 2001, Contact: Andrew R. Grainger (800) 881–7292.

Dated: March 27, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–7946 Filed 3–29–01; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Designation of Two (2) High Intensity Drug Trafficking Areas

ACTION: Notice.

SUMMARY: This notice lists two (2) new High Intensity Drug Trafficking Areas (HIDTAs) designated by the Director of National Drug Control Policy (ONDCP). The newly designated HIDTAs are the Nevada HIDTA consisting of Clark County and the North Florida HIDTA consisting of Baker, Clay, Duval, Flagler, Nassau, Putnam, St. Johns and Marion Counties. These new HIDTAs are designated pursuant to 21 U.S.C. 1706(b), to promote more effective coordination of drug control efforts. In considering whether to designate an area under this section as a high intensity drug trafficking area, the Director considered, in addition to such other criteria the Director considers to be appropriate, the extent to which: (1) The area is center of illegal drug production, manufacturing, importation, or distribution; (2) state and local law enforcement agencies have committed resources to respond to the drug trafficking problem in the area, thereby indicating a determination to respond aggressively to the problem; (3) drug-related activities in the area are having a harmful impact in other areas of the country; and (4) a significant increase in allocation of Federal resources is necessary to respond adequately to drug-related activities in the area.

This action will support local, state and Federal law enforcement officers in assessing regional drug threats, designing strategies to combat the threats, developing initiatives to implement the strategies, and evaluating the effectiveness of their coordinated efforts.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding this notice should be directed to Mr. Kurt F. Schmid, National HIDTA Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 395–6692.

SUPPLEMENTARY INFORMATION: In Fiscal Year 2000, 1242 agencies participated in 462 HIDTA-funded initiatives within the 26 previously designated HIDTA regions throughout the country. The HIDTA Programs strengthens local, state and Federal drug trafficking and money laundering task forces, bolsters drug enforcement information networks, and improves integration of law enforcement, drug treatment and drug abuse prevention programs, where appropriate.

Signed at Washington, DC this 9th day of March, 2001.

Edward H. Jurith,

Acting Director.

[FR Doc. 01–7903 Filed 3–29–01; 8:45 am]

BILLING CODE 3180–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the Capability Assessment for Readiness (CAR) which collects data on the capabilities of States to effectively respond to major disasters and emergencies.

SUPPLEMENTARY INFORMATION: The CAR program was established based on the requirement recognized by both the U.S. Congress and FEMA that an assessment of State capabilities was needed to determine the States' readiness to effectively respond to major disasters, and secondarily that FEMA financial assistance to the States is being effectively utilized. The answers to these questions are provided in the CAR assessment that involves detailed programmatic questions on mitigation, preparedness, response, and recovery activities.

Section 313 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288, as amended) requires the President to ''conduct annual reviews of activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs. * * *''

Section 613 of the Stafford Act concerning financial contributions to States for necessary and essential State and local emergency preparedness personnel and administrative expenses provides that the State ''shall make such reports in such form and content as the Director may require.''

Collection of Information

Title: Capability Assessment for Readiness (CAR).

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0272.

Abstract. The Capability Assessment for Readiness is required for the Federal Emergency Management Agency to report the status of emergency management programs in the Nation to the President and the U.S. Congress. States, Territories and Insular Areas use it for program evaluation, strategic planning and budgeting. It is also needed for program evaluation and management to assure that Federal funding to Sate and local governments, Territories and Insular Areas is properly managed and targeted to those areas that need improvement and to satisfy the Government Performance and Results Act of 1993 and in order to meet the goals stated in the Strategic Plan of the Federal Emergency Management Agency. The data collected will be summarized in a report the President and Congress in early 2001.

Affected Public: State, Local, or Tribal Government (U.S. States and Territories).

Estimated Total Annual Burden Hours: 3,360 biennially.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
	56	Biennial	60	3,360
Total	56	Biennial	60	[1] 3,360

[1] 1,680 on an annual basis.

Estimated Cost. Cost to Federal Government is $478,000. The cost to the States is $87,360.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) determine an estimated cost of the proposed data collections to respondents; (d) enhance the quality, utility, and clarity of the information to be collected; and, (e) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cassandra Ward, Preparedness, Training, and Exercises Directorate, at (202) 646–3703. Contact Ms. Anderson at (202) 646–2625 or by facsimile (202) 646–3524 or email: *muriel.Anderson@fema.gov* for copies of the proposed collection of information.

Dated: March 21, 2001.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 01–7873 Filed 3–28–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1363–DR]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–1363–DR), dated March 13, 2001, and related determinations.

EFFECTIVE DATE: March 21, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 21, 2001.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 01–7869 Filed 3–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3164–EM]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3164–EM), dated March 20, 2001, and related determinations.

EFFECTIVE DATE: March 20, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 20, 2001, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121 (Stafford Act) as follows:

I have determined that the emergency conditions in certain areas of the State of Maine, resulting from the record/near record snow on March 5–7, 2001, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121 (Stafford Act).

I, therefore, declare that such an emergency exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for subgrantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared emergency:

Cumberland, Lincoln, Sagadahoc, and York Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–7870 Filed 3–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3164–EM]

Maine; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Maine, (FEMA–3164–EM), dated March 20, 2001, and related determinations.

EFFECTIVE DATE: March 21, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Maine is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 20, 2001:

Androscoggin and Oxford Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 01–7871 Filed 3–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1356–DR]

Texas; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1356–DR), dated January 8, 2001, and related determinations.

EFFECTIVE DATE: March 13, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice is hereby given that, in a letter dated March 13, 2001, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), in a letter to Joe M. Allbaugh, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Texas resulting from a severe winter ice storm beginning on December 12, 2000, and continuing through January 15, 2001, is of sufficient severity and magnitude that the provision of additional Federal assistance to ensure public health and safety is warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121 (Stafford Act).

Therefore, I amend the major disaster declaration of January 8, 2001, to provide that the Federal Emergency Management Agency (FEMA) may reimburse 100 percent of the costs of debris removal through July 9, 2001. This adjustment of the cost share may be provided to all counties under the major disaster declaration. You may extend this assistance for an additional period of time, if requested and warranted.

Please notify the Governor of Texas and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–7867 Filed 3–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1361–DR]

Washington; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1361–DR), dated March 1, 2001, and related determinations.

EFFECTIVE DATE: March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 1, 2001:

Benton and Clark Counties for Individual Assistance
Clallam and Whatcom Counties for Individual and Public Assistance
Snohomish County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 01–7868 Filed 3–29–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Project Impact: Building Disaster Resistant Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of funds and grant availability.

SUMMARY: FEMA gives notice of the availability of $25 million of funds for grants and technical assistance to Project Impact disaster resistance communities and States with Project Impact communities. The funds will also be used for education, training, and partnership development. The funds will be provided to designated Project Impact communities (see attached list).

DATES: Grant funds are available as of March 30, 2001.

ADDRESSES: Approved communities will receive grant application packages by March 31, 2001.

FOR ADDITIONAL INFORMATION, CONTACT: Carol Transou, Federal Emergency Management Agency, 500 C Street, SW., room 402, Washington, DC 20472, (202) 646–3701, (telefax)(301) 646–3231, or (email) *carol.transou@fema.gov.*

SUPPLEMENTARY INFORMATION: Under Public Law *106–377*, 114 Stat. *1441*, Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act, 2001, we are issuing a Request for Application (RFA) to implement $25 million for designated Project Impact communities.

Community grants. The community grant is available to designated Project Impact communities to facilitate the development and implementation of a comprehensive, long-term mitigation strategy through collaboration with private sector and non-profit organizations, and with local, State, and Federal government partners. Within this framework, the community grant funds prevention projects (mitigation measures) that result in long-term reductions in disaster losses as well as contribute to the sustainability of the partnership.

Who is eligible for grants? The community which a State has selected, with FEMA concurrence, as a Project Impact community is eligible for a community grant.

What are mitigation measures? Mitigation measures generally are those projects and actions that reduce the potential losses to life and property from natural hazard events in a permanent or long-term manner. Communities shall categorize mitigation projects as: (1) Hazard identification and risk assessment; (2) Adoption of policies or practices for mitigation in existing buildings or new construction; (3) Mitigation for existing buildings; (4) Mitigation of existing infrastructure: such as, utility facilities and transportation systems that are publicly owned and operated on a non-profit basis; (5) activities that lead to building or sustaining public/private partnerships, or that support public awareness of mitigation; and (6) Personnel support .

What is the process for applying? For designated community assistance, communities must submit a grant application package to FEMA. FEMA regions will work with the communities to complete this application package. The community shall submit the grant application to the FEMA Regional Director.

What criteria will FEMA apply to grant applications? For a designated community, we will review and negotiate with the local jurisdiction to determine whether the proposed activities would: (1) reduce the likelihood of future disaster costs under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and (2) help sustain the community's momentum in broad-based mitigation efforts. Activities the community may pursue are described in the previous section entitled *What are mitigation measures.*

Dated: March 26, 2001.

Margaret E. Lawless,

Acting Executive Associate,, Director for Mitigation.

[FR Doc. 01–7872 Filed 3–29–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 13, 2001.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:.

1. Boston Federal Savings Bank Employee Stock Ownership Plan, Burlington, Massachusetts; to acquire voting shares of BostonFed Bancorp, Inc., Burlington, Massachusetts, and thereby indirectly acquire shares of Boston Federal Savings Bank, Burlington, Massachusetts, and Broadway National Bank, Chelsea, Massachusetts.

Board of Governors of the Federal Reserve System, March 26, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–7862 Filed 3–29–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes

and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. C.C. Bancorp, Inc., Little Valley, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Cattaraugus County Bank, Little Valley, New York.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to merge with Drovers Bancshares Corporation, York, Pennsylvania, and thereby acquire The Drovers and Mechanics Bank, York, Pennsylvania.

Board of Governors of the Federal Reserve System, March 26, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–7863 Filed 3–29–00; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Proposed Submission to the Office of Management and Budget (OMB) for Clearance; Comment Request; Extension of a Currently Approved Information Collection

AGENCY: Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, provides an opportunity for comment on the following proposal for the collection of information in compliance with the Paperwork Reduction Act (PRA; Public Law 96–511):

Title of Information Collection: Performance Progress Reports for Title IV Grantees.

Type of Request: Extension of use of the report, with no revision.

Use: Extension of reporting format for use by Title IV grantees in reporting on activities of their Title IV Discretionary Funds Projects as required under Title IV of the Older Americans Act, as amended.

Frequency: Semi-annually.

Respondents: States, public agencies, private nonprofit agencies, institutions of higher education, and organizations, including tribal organizations.

Estimated Number of Responses: 160.

Total Estimated Burden Hours: 3,200.

Additional Information or Comments: The Administration on Aging plans to submit to the Office of Management and Budget for approval, an extension, with no revisions, of a reporting form and instructions for the Title IV Discretionary Funds Program, pursuant to requirements in Title IV of the Older Americans Act. Written comments and recommendations for the proposed information collection should be sent within 60 days of the publication of this notice directly to the following address: Office of Program Development, Administration on Aging, Attention: Judy Satine, 330 Independence Avenue, SW., Washington, DC 20201.

Dated: March 22, 2001.

Norman L. Thompson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 01–7906 Filed 3–29–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–01–03]

Fiscal Year 2001 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Request for applications for a Technical Assistance Project for Statewide Senior Legal Hotlines to provide technical assistance and guidance to support statewide senior legal hotlines programs.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for a grant award for *one* (1) project at a federal share of approximately $90,000 to $100,000 per year for a project period of three years. The purpose of the project is to provide appropriate technical assistance to statewide senior legal hotline programs aimed at advancing the quality and accessibility of the legal assistance provided to older people.

The deadline date for the submission of applications is May 11, 2001. Eligibility for grant awards is limited to public and/or nonprofit agencies, organizations, and institutions experienced in providing legal assistance to older persons.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW., Room 4264, Washington, DC 20201, by calling 202/619–2987, or on the web at *http://www.aoa.gov/t4/fy2001.*

Dated: March 23, 2001.

Norman L. Thompson,

Acting Principal Deputy Assistant Secretary for Aging.

[FR Doc. 01–7905 Filed 3–29–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0132]

Agency Information Collection Activities; Proposed Collection; Comment Request; Institutional Review Boards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's protection of human subjects recordkeeping and reporting requirements for institutional review boards (IRB's). IRB's are groups composed of members of varying backgrounds that are charged with reviewing the ethics and risk/benefit aspects of clinical studies involving human subjects to assure that the rights and welfare of human subjects are adequately protected.

DATES: Submit written or electronic comments on the collection of information by May 29, 2001.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Institutional Review Boards—Section 56.115 (21 CFR 56.115) (OMB Control No. 0910–0130)—Extension

When reviewing clinical research studies regulated by FDA, IRB's are required to create and maintain records describing their operations, and make the records available for FDA inspection when requested. These records include: Written procedures describing the structure and membership of the IRB and the methods that the IRB will use in performing its functions; the research protocols, informed consent documents, progress reports, and reports of injuries to subjects submitted by investigators to the IRB; minutes of meetings showing attendance, votes and decisions made by the IRB, the number of votes on each decision for, against, and abstaining, the basis for requiring changes in or disapproving research; records of continuing review activities; copies of all correspondence between investigators and the IRB; statement of significant new findings provided to subjects of the research; and a list of IRB members by name, showing each member's earned degrees, representative capacity, and experience in sufficient detail to describe each member's contributions to the IRB's deliberations, and any employment relationship between each member and the IRB's institution. This information is used by FDA in conducting audit inspections of IRB's to determine whether IRB's and clinical investigators are providing adequate protections to human subjects participating in clinical research.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
56.115	2,000	14.6	29,200	4.5	131,400
Total					131,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The recordkeeping requirement burden is based on the following formula: Approximately 2,000 IRB's review FDA-regulated research involving human subjects annually. The burden for each of the paragraphs under § 56.115 has been considered as one estimated burden. Each paragraph cannot reasonably be segregated from one another because all are interrelated. FDA has about 2,000 IRB's in its inventory. The 2,000 IRB's meet on an average of 14.6 times annually. The agency estimates that approximately 4.5 hours of person time per meeting are required to transcribe and type the minutes of the meeting; to maintain records of continuing review activities; and to make copies of all correspondence between the IRB and investigative member records, and written IRB procedures that are approximately five pages per IRB.

Dated: March 23, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–7839 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1511]

Agency Information Collection Activities; Announcement of OMB Approval; Petition for Administrative Reconsideration of Action

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Petition for Administrative Reconsideration of Action'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 2001 (66 FR 1142), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0192. The approval expires on March 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 23, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–7832 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1604]

Agency Information Collection Activities; Announcement of OMB Approval; OTC Test Sample Collection Systems for Drugs of Abuse Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''OTC Test Sample Collection Systems for Drugs of Abuse Testing'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 2001 (66 FR 9586), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0368. The approval expires on March 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 23, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–7834 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0044]

Agency Information Collection Activities; Announcement of OMB Approval; Notification of Products Eligible for a Stay of the Effective Date of FDA's Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Notification of Products Eligible for a Stay of the Effective Date of FDA's Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 29, 2000 (65 FR 58346), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0462. The approval expires on June 30, 2001. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 23, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–7836 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1425]

Agency Information Collection Activities; Announcement of OMB Approval; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Human Tissue Intended for Transplantation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 2001 (66 FR 1138), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0302. The approval expires on March 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 23, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–7838 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1467]

Agency Information Collection Activities; Announcement of OMB Approval; Shipment of a Blood Product Prior to Completion of Testing for Hepatitis B Surface Antigen (HbsAg); and Shipment of Blood Products Known Reactive for HBsAg

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Shipment of a Blood Product Prior to Completion of Testing for Hepatitis B Surface Antigen (HbsAg); and Shipment of Blood Products Known Reactive for HBsAg'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 11, 2000 (65 FR 77383), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0168. The approval expires on March 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 23, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–7840 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01F–0142]

Ecolab, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ecolab, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of peroxyacetic acid, octanoic acid, acetic acid, hydrogen peroxide, peroxyoctanoic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on poultry carcasses, poultry parts, and organs.

DATES: Submit written comments on the petitioner's environmental assessment by April 30, 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: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 1A4728) has been filed by Ecolab, Inc., Ecolab Center, 370 Wabasha St., St. Paul, MN 55102. The petition proposes to amend the food additive regulations in Part 173 *Secondary Direct Food Additives Permitted in Food for Human Consumption* (21 CFR part 173) to provide for the safe use of a mixture of peroxyacetic acid, octanoic acid, acetic acid, hydrogen peroxide, peroxyoctanoic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on poultry carcasses, poultry parts, and organs.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may submit to the Dockets Management Branch written comments by April 30, 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 9, 2001.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–7835 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 26, 2001, 8 a.m. to 6 p.m., and on April 27, 2001, 8:30 a.m. to 12 noon.

Location: Holiday Inn, The Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6758, e-mail: PerezT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 26, 2001, the committee will consider the safety and efficacy of new drug application (NDA) 21–144, Ketek™ (telithromycin) tablets, Aventis Pharmaceuticals, Inc., for the treatment of bacterial respiratory infections.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 18, 2001. Oral presentations from the public will be scheduled on April 26, 2001, between approximately 2 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 18, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On April 27, 2001, from 8:30 a.m. to 12 noon, the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 22, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–7878 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Nonprescription Drugs Advisory Committee and the Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 11, 2001, 8 a.m. to 5 p.m.

Location: Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Sandra L. Titus or Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 12541 and 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committees will consider citizen petition 98P–0610/CP1, submitted by Blue Cross of California, that requested the agency to convert fexofenadine hydrochloride, loratadine, and cetirizine hydrocholoride to over-the-counter (OTC) status.

Background material, including the petition to switch the antihistamines to OTC status, is available at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. Click on the year 2001 and go to the May 11th Nonprescription Drugs Advisory Committee file.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 2, 2001. Oral presentations from the public will be scheduled between approximately 9 a.m. and 9:30 a.m. and between approximately 1 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 2, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 22, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–7877 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–10035]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Collection of Data on Quality Indicators

for Congestive Heart Failure Submitted by Medicare+Choice Organizations Requesting Extra Payments in CY2002 and CY2003 and Supporting Regulations in 42 CFR, 422.152(b)(2).

Form No.: HCFA–10035 (OMB# 0938–NEW).

Use: HCFA requires Congestive Heart Failure (CHF) quality indicator performance data from qualifying Medicare+Choice organizations opting to receive extra payments for CY2002 and CY2003. This collection will collect the necessary data to assess the need for extra payments.

Frequency: Annually.

Affected Public: Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 125.

Total Annual Responses: 125.

Total Annual Hours: 11.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, HCFA–10035, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 22, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–7902 Filed 3–29–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1189–N]

Medicare Program: April 26, 2001, Meeting of the Advisory Panel on Medicare Education

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on Thursday, April 26, 2001. This Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Health Care Financing Administration (HCFA), on opportunities for HCFA to optimize the effectiveness of the National Medicare Education Program and other HCFA programs that help Medicare beneficiaries understand Medicare and the range of Medicare options available with the passage of the Medicare+Choice Program. The Panel meeting is open to the public.

DATES: The meeting is scheduled for Thursday, April 26, 2001, from 9 am. e.s.t. to 5 pm. e.s.t.

ADDRESSES: The meeting will be held at the Wyndham Washington, D.C. Hotel, 1400 M Street NW., Washington, DC, 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Nancy Caliman, Health Insurance Specialist, Partnership Development Group, Center for Beneficiary Services, Health Care Financing Administration, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the HCFA Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.hcfa.gov/events/apme/homepage.htm*) for additional information and updates on committee activities, or contact Ms. Caliman via E-mail at APME@hcfa.gov. Press inquiries are handled through the HCFA Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act, as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing the panel on January 21, 1999 (64 FR 7849) and subsequently renewed the charter on January 18, 2001. The Advisory Panel on Medicare Education advises the Department of Health and Human Services and the Health Care Financing Administration on opportunities to enhance the effectiveness of consumer education materials serving the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare;
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships;
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program;
- To assemble an information base of best practices for helping consumers evaluate health plan options and building a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Diane Archer, J.D., President, Medicare Rights Center; David Baldridge, Executive Director, National Indian Council on Aging; Bruce Bradley, M.B.A., Director, Managed Care Plans, General Motors Corporation; Carol Cronin, Chairperson, Advisory Panel on Medicare Education; Joyce Dubow, M.U.P., Senior Policy Advisor, Public Policy Institute, AARP; Jennie Chin Hansen, Executive Director, On Lok Senior Services; Elmer Huerta, M.D., M.P.H., Director, Cancer Risk and Assessment Center, Washington Hospital Center; Bonita Kallestad, J.D., M.S., Western Minnesota Legal Services/Mid Minnesota Legal Assistance; Steven Larsen, J.D., M.A., Maryland Insurance Commissioner, Maryland Insurance Administration; Brian Lindberg, M.M.H.S., Executive Director, Consumer Coalition for Quality Health Care; Heidi Margulis, B.A., Vice President, Government Affairs, Humana, Inc.; Patricia Neuman, Sc.D., Director, Medicare Policy Project, Henry J. Kaiser Family Foundation; Elena Rios, M.D., M.S.P.H., President, National Hispanic Medical Association; Samuel Simmons, B.A., President and CEO, The National Caucus and Center on Black Aged, Inc.; Nina Weinberg, M.A., President, National Health Council; and Edward Zesk, B.A., Executive Director, Aging 2000.

The agenda for the April 26, 2001 meeting will include the following:

- Recap of the previous (January 10, 2001) meeting;
- HCFA update/issues;
- Appropriate funding for Medicare education;
- How the private sector conducts Medicare education for retirees;
- HCFA plan to serve limited English proficient beneficiaries and to provide culturally and linguistically appropriate information;
- APME annual report;
- Public comment.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact Ms.

Caliman by 12 noon on Thursday, April 19, 2001, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to Ms. Caliman no later than 12 noon on Thursday, April 19, 2001. Anyone who is not scheduled to speak may submit written comments to Ms. Caliman by 12 noon, Thursday, April 19, 2001. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Ms. Caliman at least 15 days before the meeting.

(Sec. 222 of the Public Health Service Act (42 USC 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a)(1) and (a)(2)); 41 CFR 101–6.1015)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 22, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 01–7904 Filed 3–29–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Request for Comments on Increasing Income Levels Used To Identify a ''Low-Income'' Family for the Purpose of Providing Training in the Various Health Professions and Nursing Programs Included in Titles VII and VIII of the Public Health Service Act

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice requests comments on increasing low-income levels for various programs included in Titles VII and VIII of the Public Health Service (PHS) Act, which use ''low-income'' levels to determine eligibility for program participation. The Department periodically publishes in the **Federal Register** low-income levels used to determine eligibility for grants and cooperative agreements to institutions providing training for (1) disadvantaged individuals, (2) individuals from a disadvantaged background, or (3) individuals from ''low-income'' families.

DATES: Interested persons are invited to comment on the proposed low-income levels for the programs listed below. All comments received on or before April 30, 2001 will be considered when final low-income levels are determined for purposes of eligibility for participation in the programs listed below.

ADDRESSES: Written comments should be addressed to Ms. Sarah Richards, Evaluation Officer, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8–67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Richards, Evaluation Officer, BHPr; telephone number (301) 443–5452.

SUPPLEMENTARY INFORMATION: This notice is to announce the proposed increase in income levels that is intended for use in determining eligibility for participation in the following programs:

Advanced Education Nursing (section 811)
Allied Health Special Projects (section 755)
Basic Nurse Education and Practice (section 831)
Dental Public Health (section 768)
Faculty Loan Repayment and Minority Faculty Fellowship Program (section 738)
General and Pediatric Dentistry (section 747)
Health Administration Traineeships and Special Projects (section 769)
Health Careers Opportunity Program (section 739)
Loans to Disadvantaged Students (section 724)
Physician Assistant Training (section 747)
Primary Care Residency Training (section 747)
Public Health Traineeships (section 767)
Quentin N. Burdick Program for Rural Interdisciplinary Training (section 754)
Residency Training in Preventive Medicine (section 768)
Scholarships for Disadvantaged Students (section 737)
Public Health Training Centers (section 766)
Nursing Workforce Diversity (section 821)

These programs generally award grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, nursing, chiropractic, public or private nonprofit schools which offer graduate programs in behavioral health and mental health practice, and other public or private nonprofit health or education entities to assist the disadvantaged to enter and graduate from health professions and nursing schools. Some programs provide for the repayment of health professions or nursing education loans for disadvantaged students.

Proposed Low-Income Levels

The Secretary proposes that, for programs included in Titles VII and VIII of the PHS Act, a ''low-income'' family be defined as having an annual income that does not exceed 200 percent of the Department's poverty guidelines. The Department poverty guidelines are published annually for general use while the Department's HRSA low-income levels are specific to the programs listed under the Supplementary Information section of this notice. This notice proposes an increase over the income level currently used, which is 130 percent of the Department's poverty guidelines. The Department's poverty guidelines are based on poverty thresholds published by the U.S. Census Bureau, adjusted annually for changes in the Consumer Price Index.

The Secretary would continue to adjust the low-income levels annually based on the Department's poverty guidelines and make them available to persons responsible for administering the applicable programs.

In developing the revised family income levels for determining eligibility for the applicable Titles VII and VIII programs, the Secretary chose 200 percent of the Department's poverty guidelines for the following reasons: First, 200 percent of the poverty guidelines is a statutory eligibility level used by the Department for the State Children's Health Insurance Program (SCHIP), which provides health care insurance to children who are from families with incomes too high to qualify for Medicaid but too low to afford private health insurance. Secondly, the proportion of the population below 200 percent of the Census Bureau poverty thresholds is one criterion used by the Department in the designation of population groups with shortages of health care providers. Thus, using 200 percent of the Department poverty guidelines to determine low-income status is consistent with other Department programs and activities directed toward uninsured and underserved individuals and population groups.

The Secretary has developed the proposed income levels as a means of assuring that the applicable Titles VII

and VIII programs most effectively contribute to the attainment of the HRSA goals of increasing diversity and improving distribution in the health care workforce.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

These programs are not subject to the Public Health Systems Reporting Requirements.

Dated: March 16, 2001.

Claude Earl Fox,

Administrator.

[FR Doc. 01–7841 Filed 3–29–01; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Privacy Act of 1974: New System of Records

AGENCY: Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notification of a new system of records subject to the Privacy Act of 1974.

SUMMARY: In accordance with the requirements of the Privacy Act, the Substance Abuse and Mental Health Services Administration (SAMHSA) is publishing a notice of the establishment of a new system of records, *SAMHSA Information Mailing System (SIMS).* The new system will collect limited data from individuals accessing the SAMHSA website for the purpose of requesting current and future SAMHSA publications. Data will include personal information, such as name, phone number (home phone number may be provided), address (home address may be provided), title, level of education, topics/areas of interest related to SAMHSA programs, occupation, type of organization in which employed, and ethnic group.

DATES: SAMHSA invites interested persons to submit comments on the proposed new system on or before April 24, 2001.

SAMHSA will adopt this new system without further notice on April 24, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Please address comments to the SAMHSA Privacy Act Officer, Office of Program Services, Room 13C–20, Parklawn Building, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857. We will make comments available for public inspection at the above address during normal business hours, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Director, Office of Communications, Office of the Administrator/SAMHSA, Room 13C–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301)–443–8956.

Dated: March 19, 2001.

Richard Kopanda,

Director, Office of Program Services, Substance Abuse and Mental Health Services Administration.

09–30–0051

SYSTEM NAME:

SAMHSA Information Mailing System (SIMS).

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is maintained by the Office of Communications, 5600 Fishers Lane, Rockville, Maryland 20857. The system of records will also be maintained at the site of the contractor managing SAMHSA's National Clearinghouse on Alcohol and Drug Abuse. Additional information about that contractor site is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals listed in the system are individuals who voluntarily request publications and other information from the SAMHSA Website.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals listed in the system are individuals who voluntarily request publications and other information from the SAMHSA Website.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request forms for SAMHSA publications include categories for personal information, such as name, phone number (home phone number may be provided), address (home address may be provided), title, level of education, topics/areas of interest related to SAMHSA programs, occupation, type of organization in which employed, and ethnic group.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 102–321 (''ADAMHA Reorganization Act''), sec. 501 on July 10, 1992, as amended by Pub. L. 106–310

PURPOSE(S):

To establish a mailing list of States, political subdivisions, educational agencies and institutions, treatment providers, organizations, and individuals to provide SAMHSA publications and other print materials identified as of interest to them. In addition, it is used to provide them information about new and upcoming publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. SAMHSA intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of SAMHSA only if necessary to further the implementation and operation of this program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

The records are retrieved by name; they may be sorted by topic of interest, State, organizational affiliation in order to direct information of relevance to them.

SAFEGUARDS:

—Authorized users: Only SAMHSA personnel working on this project and personnel employed by SAMHSA contractors to work on this project are authorized users as designated by the system manager.

—*Physical Safeguards:* Physical paper records are stored in lockable metal file cabinets or security rooms.

—*Procedural Safeguards:* Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.

—*Technical Safeguards:* Electronic records are protected by use of passwords.

—*Implementation Guidelines:* HHS Chapter 45–13 of the General Administration Manual, ''Safeguarding Records Contained in Systems of Records and the HHS Automated Information Systems Security Program Handbook, Information Resources Management Manual.''

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the SAMHSA Records Control Schedule, Appendix B–311 (NCI–90–76–5) Item 3.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications, Office of the Administrator, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Individuals may submit a request with a notarized signature on whether the system contains records about them to the above system manager.

RECORD ACCESS PROCEDURES:

Individuals have direct access to their personal record on the SIMS system, via the Internet, utilizing a discrete password of their own selection. Should this not be feasible or desired, and, in all other cases, requests from individuals for access to their records should be addressed to the system manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is provided by individuals, among others, who request SAMHSA publications. Furnishing of the information is voluntary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–7844 Filed 3–29–01; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless,

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of

publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses:

DOT: Mr. Rugene Spruill, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246.

GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0386.

NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 23, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 3/30/01

Suitable/Available Properties

Buildings (by State)

California

Bell. Fed. Service Center #2
5600 Rickenbacker Rd.
Bell Co: Los Angeles CA 90201–6418
Landholding Agency: GSA
Property Number: 54200110012
Status: Underutilized
Comment: 200,000 sq. ft., most recent use—warehouse
GSA Number: CA086122

New Jersey

Naval Reserve Center
53 Hackensack Ave.
Kearny Co: Hudson NJ 07302–
Landholding Agency: GSA
Property Number: 54200110013
Status: Excess
Comment: 12,180 sq. ft., bldg. w/paved parking, most recent use—office
GSA Number: NJ0000

Virginia

Structure K–BB
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110131
Status: Excess
Comment: 3,037 sq. ft., most recent use—storage, off-site use only

Structure K–CC
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110132
Status: Excess
Comment: 4,904 sq. ft., most recent use—maint. shop, off-site use only

Structure P–81
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110133
Status: Excess
Comment: 440 sq. ft., off-site use only

Structure U–113
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110134
Status: Excess
Comment: 7,115 sq. ft., most recent use—garage, off-site use only

Structure SP–128A
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110135
Status: Excess
Comment: 493 sq. ft., most recent use—storage, off-site use only

Structure SP–129
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110136
Status: Excess
Comment: 3,564 sq. ft., presence of asbestos/lead, most recent use—office, off-site use only

Structure CEP–184
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110137
Status: Excess
Comment: 200 sq. ft., off-site use only

Unsuitable Properties

Building (by State)

Michigan

Storage Shed (OS2)
USCG Station
Port Huron Co: St. Clair MI 48060–
Landholding Agency: DOT
Property Number: 87200110036
Status: Unutilized
Reasons: Floodway; Secured Area

Virginia

Bldg. MC61
Naval Station, Camp Elmore
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110119
Status: Unutilized
Reasons: Extensive deterioration

Bldg. MC62
Naval Station, Camp Elmore
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110120
Status: Unutilized
Reasons: Extensive deterioration

Facility 85
St. Julien's Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110121
Status: Excess
Reason: Extensive deterioration

Facility 113
St. Julian's Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110122
Status: Excess
Reason: Extensive deterioration

Structure 161
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110123
Status: Excess
Reason: Secured Area; Extensive deterioration

Structure 162
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110124
Status: Excess
Reason: Secured Area; Extensive deterioration

Structure 236
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110125
Status: Excess
Reason: Secured Area; Extensive deterioration

Structure 273
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110126
Status: Excess
Reason: Secured Area; Extensive deterioration

Structure 276
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110127
Status: Excess
Reasons: Secured Area, Extensive deterioration

Structure 327
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110128
Status: Excess
Reasons: Secured Area, Extensive deterioration

Structure 358
St. Julian's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110129
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 105
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110130
Status: Unutilized

Reason: Extensive deterioration

Structure T–27
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110138
Status: Excess
Reason: Extensive deterioration

Structure U–94
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110139
Status: Excess
Reason: Extensive deterioration

Structure SP–128
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200110140
Status: Excess
Reason: Extensive deterioration

Bldgs. 63, 115
USCG Training Center
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200110037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Unsuitable Properties

Land (by State)

District of Columbia

1600 sq. ft./T–88
Naval Research Lab
Washington Co: DC 20375–5320
Landholding Agency: Navy
Property Number: 77200110118
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

[FR Doc. 01–7693 Filed 3–29–01; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Moapa Paiute Energy Center and Associated Facilities, Moapa River Indian Reservation and Bureau of Land Management Lands, Clark County, NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) and the Bureau of Land Management (BLM) intend to file a Draft Environmental Impact Statement (DEIS) for the Proposed Moapa Paiute Energy Center and Associated Facilities with the Environmental Protection Agency. The DEIS was prepared with the cooperation of the Moapa Band of Paiute Indians (Tribe) and Calpine Corporation (Calpine). The Tribe proposes to lease land and water on the Moapa River Indian Reservation (Reservation) to Calpine for the construction, operation, and maintenance of a nominal baseload 760-megawatt natural gas-fired combined cycle power plant. The proposed term of the lease is 25 years, with the possibility of renewal for an additional 20 years. The purposes of the proposed action are to provide much needed economic development for the Tribe and to provide an alternative power supply to meet the growing demand for power in southern Nevada and the southwestern United States. Details on the project location, proposed action, and areas of environmental concern addressed in the DEIS are provided in the **SUPPLEMENTARY INFORMATION** section. This notice also announces public meetings to solicit comments on the content of the DEIS.

DATES: Written comments on the DEIS must arrive by May 29, 2001. The public meetings will be held on Wednesday, April 18, 2001, from 6:00 p.m. to 8:00 p.m. and on Thursday, April 19, 2001, from 6:00 p.m. to 8:00 p.m.

ADDRESSES: You may mail or hand carry written comments to Amy L. Heuslein, Regional Environmental Protection Officer, Western Regional Office, Bureau of Indian Affairs, Environmental Quality Services, P.O. Box 10, Phoenix, Arizona 85001, or to Deborah Hamlin, Realty Specialist, Southern Paiute Field Station, P.O. Box 720, St. George, Utah 84771.

The April 18, 2001, public meeting will be in the Tribal Hall, Number 1 Lincoln Street, Moapa River Indian Reservation, Moapa, Nevada. The April 19, 2001, public meeting will be in the Guy Elementary School Multi-Purpose Room, 4028 La Madre Way, North Las Vegas, Nevada.

To obtain a hard copy or CD of the DEIS, contact any one of the following: (1) Amy L. Heuslein, Regional Environmental Protection Officer, Western Regional Office, Bureau of Indian Affairs, Environmental Quality Services, P.O. Box 10, Phoenix, Arizona 85001, Telephone 602–379–6750; (2) Deborah Hamlin, Realty Specialist, Southern Paiute Field Station, P.O. Box 720, St. George, Utah 84771, Telephone 435–674–9720 or Telefax 435–674–9714; (3) BLM, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108, Telephone 702–647–5000; or (4) the Moapa Band of Paiutes, Tribal Hall, Number 1 Lincoln Street, Moapa River Indian Reservation, Moapa, Nevada, 89025, Telephone 702–865–2787 extension 202.

A hard copy of the DEIS will be available for review at the Clark County Library—Urban Branch, 1401 East Flamingo Road, Las Vegas, Nevada, Telephone 702–733–7810. The DEIS will also be available electronically on the BIA Internet web site at *http://phxao.az.bia.gov/branches/environment/eis.htm,* and on the BLM website at *http://www.nv.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Amy L. Heuslein, 602–379–6750, or Deborah Hamlin, 435–674–9720.

SUPPLEMENTARY INFORMATION: The proposed project would utilize up to 300 acres of Indian and federal lands under the jurisdiction of BIA, BLM, and the Tribe. The proposed project would be located in Clark County, Nevada, approximately 45 miles northeast of the City of Las Vegas, 15 miles southwest of the City of Glendale, and approximately 3 miles northwest of the Interstate 15 and State Route 169 interchange (location of Moapa Tribal Enterprises). The facility would be located on approximately 65 acres of Reservation land within sections 14 and 15 of Township 16 South, Range 64 East (reference: Arrow Canyon Southeast U.S. Geological Survey Map 7.5-minute series). The transmission lines would be located on Indian and federal lands within sections 14, 15, 22, 27, 28, 32, and 33 of Township 16 South, Range 64 East; sections 9, 16, 17, 20, 29, 30, and 31 of Township 17 South, Range 64 East; section 6 of Township 18 South, Range 64 East; section 1 of Township 18 South, Range 63 East; and section 36 of Township 17, Range 63 East (reference: Arrow Canyon Southeast, Dry Lake, Dry Lake Northwest, and Apex U.S. Geological Survey Maps 7.5-minute series). The access road for the Well Site and plant site would be located on Indian and federal lands within sections 15, 22, 27, 28, and 33 of Township 16 South, Range 64 East; sections 10, 15, 16, 20, 21, 29, 31, and 32 of Township 17 South, Range 64 East; sections 6 and 7 of Township 18 South, Range 64 East; and sections 12 and 13 of Township 18 South, Range 63 East (reference: Arrow Canyon Southeast, Dry Lake, Dry Lake Northwest, and Apex U.S. Geological Survey Maps 7.5-minute series).

Because the BIA has trust responsibility over Indian lands, its approval of the lease between the Tribe and Calpine is a major federal action. The preparation of this DEIS under the National Environmental Policy Act (NEPA) of 1969, as amended, is therefore required in order to evaluate potential impacts and alternatives for

project planning and environmental protection. The BLM, which also has trust responsibility, is a cooperating agency on the project because the transmission lines, the access road, and a portion of the gas pipeline traverses federal land under its jurisdiction.

The proposed nominal 760-megawatt, natural gas-fired, combined cycle power plant project would employ three gas turbines and one heat recovery steam generator (HRSG). The stacks would be approximately 145 to a maximum of 200 feet high and have a diameter of about 18 feet. Groundwater would be used in operations and for cooling. Both storm water and process wastewater would be confined to the site in retention ponds. The power plant would be fueled by natural gas from the existing Kern River (Williams) natural gas pipeline that is located on the Reservation, approximately 3,000 feet from the proposed plant location. The proposed project would include construction of a gas supply lateral pipeline on Reservation land and a power grid interconnection at the Harry Allen substation, located approximately 12 miles southwest of the proposed plant. Two parallel 230kv lines would traverse both Reservation and federal land, mostly within an existing utility corridor. The project would also include an access road to connect the site to Interstate Highway 15.

The DEIS discusses potential impacts of power plant development and operation on environmental resources in the study area. The DEIS describes the alternatives that were considered, but eliminated from further consideration, and also documents the analysis of three alternatives, the proposed action, a southern site alternative, and no action. Issues to be covered in the DEIS include geology and soils, surface and groundwater resources, biological resources, air quality, visual resources, noise, public services/utilities, hazardous materials, paleontological and cultural resources, socio-economic conditions, land use, environmental justice, Indian Trust Assets, and potential cumulative impacts.

Public Comment Solicitation

As an alternative to submitting written comments regarding the content of the EIS/EIR to the locations identified in the **ADDRESSES** section, interested persons may instead comment via the Internet to *http://phxao.az.bia.gov/branches/environment/eis* or to DeborahHamlin@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive confirmation from the system that your Internet message was received, contact Amy L. Heuslein at 602–379–6750, or Deborah Hamlin at 435–674–9720, respectively.

Comments, including names and home addresses of respondents, will be available for public review at the mailing addresses shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: March 22, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01–7896 Filed 3–29–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 149311]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

March 22, 2001.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW149311 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW149311 effective December 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 01–7845 Filed 3–29–01; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–120–1220–EA]

Establishment of a Moratorium on Issuance of New Special Recreation Permits

AGENCY: Bureau of Land Management, Portions of the Kremmling Resource Area and the Glenwood Springs Resource Area, CO.

ACTION: Notice.

SUMMARY: Public notice is hereby given that a moratorium on issuance of new Special Recreation Permits for river related commercial recreation activities in the Upper Colorado River Special Recreation Management Area is in effect. No new annual Special Recreation Permits (SRPs) for river related commercial recreation activities will be issued for the Upper Colorado River Special Recreation Management Area (SRMA) for a period of one year. The SRMA extends from approximately five miles east of Kremmling downstream to Dotsero. Only qualified commercial operators with a valid SRP for the 2000 season will be considered for renewals of annual or multi-year authorizations for the 2001 season and any future year until the moratorium is lifted. Any requests for changes in activity or location for existing permits will be reviewed and approved at the discretion of the authorized officer. The BLM will not accept any new applications nor issue any new SRPs to any individual, group, organization,

corporation or company for the purpose of providing river related commercial recreation activities.

Proposals for land-based uses within the SRMA will be accepted and evaluated by BLM to determine if a public benefit or need exists. An outfitter's desire for an authorized use does not constitute a public need, nor does market generated demand in the form of solicited calls or letters. The BLM will evaluate the public benefit or need based on certain elements such as new technology, unmet public demand, areas with low user conflict, protection of natural resources, etc. to help meet the BLM's management objectives and to provide a high quality recreation service. Issuance of a permit is discretionary with the authorized officer. The BLM reserves the right to reject any or all proposals for additional uses on existing permits or for new authorizations. The BLM is not obligated to accept a proposal based on its monetary return to the agency since the primary management objective is to best serve the public need while protecting the natural resources and maintaining a quality recreation experience.

The BLM river managers in the Kremmling and Glenwood Springs Field Offices have determined that a moratorium on new Special Recreation Permits issued for the Upper Colorado River SRMA is needed to allow the managers to utilize their time more effectively on river management issues such as visitor services, permit compliance, site maintenance, and use level issues. Currently there are 72 permits issued by Kremmling and 26 issued by Glenwood Springs authorizing river related commercial activities including raft and inflatable kayak trips, canoe and kayak instruction, guided fishing, vehicle shuttles, equipment rentals, rock climbing, and photography. Due to the large number of outfitters operating in the river corridor, it is felt that the public's needs are being adequately met at the present time. Sales of outfitting businesses and any transfers of permits will be dealt with through the BLM Manual Handbook H8372–1 and the Recreation Use Permit Administration Manual/Policy Statement and Handbook/User Guide. In addition, no subleasing of a permit is allowed.

DATES: The moratorium on new permits will go into effect immediately as of the publication date and will remain in effect until February 1, 2002. At that time, river managers will determine if additional permits will be allowed or if a continuation of the moratorium on new permits issued is necessary.

FOR FURTHER INFORMATION CONTACT: Rich Rosene, Outdoor Recreation Planner, Kremmling Field Office, P.O. Box 68, Kremmling, CO 80459, (970) 724–3437; or Dorothy Morgan, Outdoor Recreation Planner, Glenwood Springs Field Office, P.O. Box 1009, Glenwood Springs, CO 81602, (970) 947–2806.

SUPPLEMENTARY INFORMATION: Authority for implementing this action is found in 43 CFR 8372.3.

Dated: February 22, 2001.

Dave Harr,

Field Manager, Kremmling Field Office.

Anne Huebner,

Field Manager, Glenwood Springs Field Office.

[FR Doc. 01–7966 Filed 3–29–01; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF JUSTICE

National Drug Intelligence Center

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of Information Collection Under Review; New Collection; National Drug Threat Survey.

The Department of Justice, National Drug Intelligence Center (NDIC) submits the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on January 25, 2001, (Volume 66, Number 17) allowing for a 60-day public comment period. The purpose of this notice is to allow an additional 30 days for public comment until April 30, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* New Collection.

2. *Title of the Form/Collection:* National Drug Threat Survey.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form #A–34-National Drug Intelligence Center.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment. It provides direct access to detailed drug offense data from state and local law enforcement agencies.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,500 responses at 3 hours per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 7,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: March 26, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–7864 Filed 3–29–01; 8:45 am]

BILLING CODE 4410–DC–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review; extension of a currently approved collection; Supplementary Homicide Report.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on January 26, 2001, allowing for a 60 days comment period.

The purpose of this notice is to allow for an additional 30 day for public comment until April 30, 2001. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Comments may also be submitted to Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Current Approved Collection

(2) *Title of the Form/Collection:* Supplementary Homicide Report

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: FORM I–704. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Local and state law enforcement agencies. This report will gather information on age, sex, race, ethnic origin, and relationship of murder victims; the weapon and motive. Summary statistics are published in the Annual Report entitled *Crime in the United States.*

(5) As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 16,788 agencies with 201,456 responses (Including zero reports) and with an average of nine minutes a month per responding Agency.

(6) An estimate of the total public burden (in hours) associated with the collection: 30,218 hours annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 1331 Pennsylvania Avenue, NW., Washington, DC 20503.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 27, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–7865 Filed 3–29–01; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; application to register permanent residence or adjust status, and supplement A to form I–485.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 29,2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–485. Form I–485 Supplement A. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individuals or households. This information will be used to request and determine eligibility for adjustment of permanent residence status. This application allows an applicant to determine whether he or she must file under section 245 or 249 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I–485 Adult respondents is 314,793 at 5.25 hours per response; I–485 Children respondents at 247,289 at 4.5 hours per response; Supplement A respondents is 73,418 at 13 minutes (.216 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Form I–485 and Supplement A to Form I–485 annual burden hours are 2,781,321.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comment and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, National Place Building, Washington, DC 20530.

Dated: March 26, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–7913 Filed 3–29–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for travel document.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

The INS published a **Federal Register** notice on December 6, 2000 at 65 FR 76283, to solicit public comments for a 60-day period regarding the extension of From I–131 (Application for Travel Document). The INS had received no public comment on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 30, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Room 10235, Washington, DC 20530; Attention: Lauren Wittenberg, Department of Justice Disk Officer; 202–395–4318.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–131, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used by permanent residents or conditional residents, refugees or asylees, and aliens abroad seeking to apply for a travel document to lawfully reenter the United States or to be paroled for humanitarian purposes into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 453,318 responses at 55 minutes (.90 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 407,986 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: March 23, 2001.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–7912 Filed 3–29–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS 2119–01]

Effective Date of the Revised Form I–129W

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces that, effective April 13, 2001, the Immigration and Naturalization Service (INS) will only accept the December 18, 2000, version of Form I–129W, H–1B Data Collection and Filing Fee Exemption. Prior editions of the form will not be accepted. Form I–129W is a supplemental form designed by the INS to capture essential information required for the adjudication of Form I–129, Petition for Nonimmigrant Worker. The information captured on Form I–129W is required as a result of recent legislation.

DATES: This notice is effective April 13, 2001.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Background

Who Is an H–1B Nonimmigrant?

An H–1B nonimmigrant is an alien employed in a specialty occupation or a fashion model of distinguished merit and ability. A specialty occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for entry into the United States.

What Is a Form I–129W?

Form I–129W, H–1B Data Collection and Filing Fee Exemption, is a supplemental form designed by the INS to capture essential information required for the adjudication of Form I–129, Petition for Nonimmigrant Worker. The information captured on Form I–129W is required as a result of the passage of three bills: The American Competitiveness and Workforce Improvement Act of 1998, Public Law 105–277 (ACWIA); An Act to increase the amount of fees charged to employers who are petitioners for the employment of H–1B nonimmigrant workers, Public Law 106–311; and the American Competitiveness in the Twenty-First Century Act, Public Law 106–313 (AC21). The Form I–129W also captures information required by the INS to compile reports required by Congress. The INS is presently modifying Form I–129 in order to capture the information requested on Form I–129W. When this effort is completed, the Form I–129W will no longer be used. Once Form I–129 is revised, INS will publish these proposed changes in a future edition of the **Federal Register** for public comment in accordance with the requirements of the Paperwork Reduction Act.

What Does This Notice Do?

This notice announces that as of April 13, 2001, the INS will only accept December 18, 2000, versions of Form I–129W. Earlier versions of the Form I–129W that are submitted after April 13, 2001 will not be accepted. The INS will reject a Form I–129 that is not accompanied by the correct version of Form I–129W.

Dated: March 23, 2001.

Mary Ann Wyrsch,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–7842 Filed 3–29–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities; Proposed Collection; Request for Comments

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the proposed continued 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, VETS is soliciting comments concerning the proposed extension of the information collection request for the VETS 300, Cost Accounting Report, DVOP/LVER Programs and Manager's Report.

DATES: Comments are to be submitted by May 29, 2001.

ADDRESSES: Comments are to be mailed to the Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, to the attention of Ronald Bachman, Acting Director, Office of Operations and Programs. Written comments limited to 10 pages or fewer may be transmitted by facsimile to (202) 693–4755 or e-mail to *Bachman-Ronald@dol.gov.* Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4707 (VOICE) or (202) 693–4753 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: Ronald Bachman, Acting Director, Office of Operations and Programs, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone: (202) 693–4707.

Copies of the referenced information collection request are available for inspection and copying through VETS and will be mailed to persons who request copies by telephoning Ronald Bachman at (202) 693–4707.

SUPPLEMENTARY INFORMATION:

I. Background

The VETS 300 Cost Accounting Report DVOP/LVER Report provides data on State public employment service program expenditures. This data is used at the Federal level by VETS for program budgeting and administration purposes, and to meet the mandated reporting requirements to the President and to Congress. Each State Employment Service Office is required to submit the VETS 300 Cost Accounting Report on a quarterly basis, and one additional, Final Fiscal Year Report.

Title 38 U.S.C. requires not less frequently than on a quarterly basis, an LVER assigned to a local employment service office (LESO) submit a report (Manager's Report) to the manager of the office, and to the Director Veterans' Employment and Training Service (DVET). This report addresses the LESO's compliance and performance with Federal law and regulations with respect to special services and priorities for eligible veterans and eligible persons. Section V(C)(3) of the Special Grant Provisions, requires that this

quarterly report also include, at the least, an analysis of compliance with the applicable measures of Services or standards of performance pertinent to services to veterans, and the quantity and quality of services provided to eligible veterans and eligible persons by the LESO (or other designated service delivery point), to include Vocational Rehabilitation and Employment activity.

These reports were previously submitted to the Office of Management and Budget (OMB) for approval as part of a package by the Employment and Training Administration and assigned OMB No. 1205–0240. VETS is submitting a new request to extend the current collection forms and requesting a new OMB Number.

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning the proposed extension of the information collection request for the VETS 300 Cost Accounting Report DVOP/LVER Programs and Manager's Report. 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

This notice requests extended approval from OMB for the collection of information, submission, and other paperwork requirements of the VETS Cost Accounting Report; DVOP/LVER Programs.

Type of Review: Extension of a currently approved collection.

Agency: Veterans' Employment and Training Service.

Title: VETS 300 Cost Accounting Report DVOP/LVER.

OMB Number: New (formerly 1205–0240).

Affected Public: State, Local, and Tribal Governments.

Reports	Number of respondents	Number of responses	Frequency	Average time per response (hours)	Estimated burden hours
VETS–300	53	265	Quarterly Annually	1	265
Manager's Report	1,600	8,000	Quarterly Annually	.83	6,640
Total	1,653	8,265			6,905

Total Annualized Capital/startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the agency's request for OMB approval of the information collection request. Comments will become a matter of public record.

Dated: March 26, 2001.

Stanley A. Seidel,

First Assistant Secretary, VETS.

[FR Doc. 01–7910 Filed 3–29–01; 8:45 am]

BILLING CODE 4910–79–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Labor (DOL), 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 the requested data can be provided in the desired format, the reporting burden (time and financial resources) is minimized, the collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments about the proposed new collection of information on the validity or correctness of certain Unemployment Insurance (UI) data that States now provide to ETA in monthly, quarterly or annual reports. Some of these data are used to calculate performance measures or to allocate the funds used for program administration. ETA is seeking Office of Management and Budget (OMB) approval under the PRA95 to establish a UI Data Validation (UIDV) program to replace the existing Workload Validation (WV) program. The WV program, for which authority expired on 12/31/2000, validated—checked the accuracy of—a small number of reported data elements that are used to determine the allocation of funds appropriated for UI program administration. Under the more comprehensive UIDV program, States would validate about half the data they now report, including all the workload items. The UIDV system would increase the validation reporting burden. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 29, 2001.

ADDRESSES: All comments about this proposed collection of information should be addressed to: Burman Skrable, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–3197 (this is not a toll-free number); fax: 202–693–3229; e-mail: *bskrable@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(6) of the Social Security Act specifies that the Secretary

of Labor will not certify State UI programs to receive administrative grants unless the State's law includes provisions for—

> Making of such reports. * * * as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

Since the mid-1970s, all State Employment Security Agencies have been required to check the validity of certain data elements they submit on four required UI reports. The Department uses these data in a formula for determining each State's share of funds appropriated for the administration of the State's UI program. These elements are all aggregate counts of the number of times the State performs certain activities, or counts of such items as employers subject to UI taxes.

Validation and the UI System. Validity means that the counts the State submits on its reports are correct accumulations of elements which conform to the Federal reporting definitions. State staff, following the instructions in ET Handbook No. 361, perform this WV process; Department of Labor Regional staff, assisted by a technical support contractor, audit the State's validations. The validation has two dimensions: *quantity* and *quality.* The *quantity* validation consists of comparing a reported count for a selected period with a reconstructed validation count; it passes if there is no more than a 2% difference between the two. In the *quality* validation, samples of each element are checked against primary agency records to ensure that the proper activities are being counted according to Federal reporting definitions. To pass, a sample may contain no more than 5% invalid elements. The WV process is repeated every three years if all validations pass; any failure requires a revalidation of failed elements the following year.

Starting in the 1980s and continuing through the 1990s, the General Accounting Office and the Department's Office of Inspector General have criticized ETA for not validating all elements it requires States to report as program managers and policy officials at all levels rely upon such elements in making decisions affecting program design, funding and operations. More recently, the Government Performance and Results Act (GPRA) emphasizes that agencies need to ensure the validity of all data on which they base their strategic planning decisions and performance determinations. Commonly, agencies' GPRA displays indicate how they validate, or propose to validate, their performance data.

In the 1990s DOL asked Mathematica Policy Research, Inc., to develop a more automated validation approach in conjunction with its management of the field test of new benefits timeliness and quality measures. When the field test showed the methodology to be sound, it was extended to key UI tax performance data.

The new UIDV system has one feature in common with the WV system, but also some important differences:

- In common with WV, UIDV does *quantitative* validation by independently reconstructing reported counts, and *qualitative* validation by checking samples against primary agency records;
- The major differences are:

—WV starts with workload items, identifies each item the report elements comprise, and validates the report elements. In contrast, UIDV starts with the report elements to be validated. It first identifies the broad groups (''populations'') of underlying elementary transactions on which those report elements are based (e.g., initial claims), then devises mutually exclusive subgroups (''subpopulations'') which relate to the report elements.

—UIDV uses State-specific handbooks (one for benefits, another for tax) instead of one generic handbook. The UIDV handbooks' instructions for programmers and validators are specific to a State's own management information system. Thus, Federal reporting requirements are mapped to the related data element on each individual State's data system.

—UIDV is more highly automated and efforts are being made to automate its operations further to increase efficiency;

—UIDV's scope of validation is more extensive. It validates approximately half of the elements on the 47 required UI reports, versus WV's validation of only 29 data elements on four reports. UIDV validates all workload elements, including most of the data used to construct the Tier I UI performance measures (See Unemployment Insurance Program Letter 37–99, July 1, 1999, published as **Federal Register** Notice 64 FRN 38088 (July 14, 1999)).

UIDV Pilot Test. Three States pilot tested the UIDV system between November 1997 and October 1998. Two States undertook validation of all benefit and tax report elements in the UIDV handbooks; the other State validated all benefits elements but only validated one (Field Audit) of the five tax populations. Pilot States and associated ETA Regional Office staff received preparatory training before starting and technical assistance throughout the pilot from a support contractor.

In brief, the pilot test showed:

- States could generally implement the UIDV system with a reasonable but sustained level of effort.
- The UIDV system worked as designed to discover reporting errors.
- States do make reporting errors which need detecting and fixing.
- The reporting problems can be fixed.
- The average staff requirements from the pilot test were about 2200 hours to complete Benefits Validation and about 2300 hours for Tax Validation, or 2.2–2.5 staff years for both, of which programming time was about 77% or 1.8 staff years. The contractor's evaluation report estimated that the continuing validation cost will be about 35% of initial, or about 0.8 staff years for tax and benefits validation combined. Very little of this is programmer time.

Although DOL has based the burden estimates below on the pilot program experience, it believes the estimates represent an upper limit for the true burden. The pilot was conducted while States were addressing Y2K concerns, which caused turnover among programmer staff and a lack of availability or intermittent availability of senior programmers for the pilot. The Department is also working to develop additional automation for the UIDV processes which will reduce initial programming time below the pilot test estimate.

II. Review Focus

DOL 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, especially 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;
- Discuss how to enhance the quality, utility, and clarity of the information to be collected; and
- Suggest how to 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).

III. Current Actions

The Department proposes the following plan for implementing and operating the UIDV system:

- Mandatory implementation will begin around July 2001; States have been encouraged by Unemployment Insurance Program Letter No. 03–01 to implement the UIDV program voluntarily before then.
- States that are not ready to begin implementation in 2001 will be required to validate all or some of the 11 workload items using the WV methodology if WV procedures would have called for validation.
- UIDV will initially retain the 3-year cycle for validation and the validation standards applied under WV (±2% for quantity, 5% for quality). The following criteria, taken from WV, will also be used to determine when deviation from the cycle will be required: (1) A change in Federal reporting requirements; or (2) failure of the previous validation test; or (3) a major change in the State's computerized data system. In each of these cases, validation would be required the following fiscal year. Once into the continuing cycle, States decide when to conduct validation during a year.
- Beginning with the FY 2004 State Quality Service Plan (SQSP) cycle, States will be required to include validation findings in the SQSP. They will be required to develop a corrective action plan for failure to complete a validation or if the same report element repeatedly fails validation.

Resources: States are expected to provide resources for UIDV from their UI administrative grant. Since the WV program was begun in the late 1970s, each State's grant has included one staff year for WV activities. The estimates below, based on estimates provided by the pilot evaluation contractor, indicate that average UIDV staffing requirements for continuing operations will be less than one staff year.

ADP Support: To reduce programming costs, the Department is developing additional software intended to limit State programming requirements to preparing the extract programs for the data elements to be validated. The additional software provided by the Department should cut the programming demand on States during implementation, which averaged 1.8 staff years in the pilot test, in half.

Data Recording and Reports: States will record the results of their investigations on spreadsheet software prepared as an accompaniment to their handbooks. Initially, the spreadsheets can be transmitted by e-mail or regular mail to the Department. Eventually, the results will be submitted the same as other reports. The results will be stored in a database in the National Office in Washington, D.C., and compiled in an annual validation accuracy report.

Training: DOL will begin conducting UIDV training for State staff in the Summer of 2001. Several sessions, perhaps on a regional basis, are envisioned. Experience to date suggests that small training sessions are most effective. States that elect to implement UIDV voluntarily may receive individual training. The Department's technical support contractor, Sparhawk Group, Inc., assisted by staff from Mathematica Policy Research, will conduct the training along with Department staff, and will provide continuing technical assistance during implementation. DOL will issue a directive containing details on the times, locations, and content of the training in advance of the sessions.

Type of Review: New .

Agency: Employment and Training Administration.

Title: Unemployment Insurance Data Validation Program.

OMB Number: 1205–0NEW.

Recordkeeping: States are required to follow their State laws regarding public record retention in retaining validation results.

Affected Public: State Governmental entities.

Reference: Handbook 361.

Total Respondents: 53.

Frequency: Complete validation every third year; annually to revalidate failed data, when there are changes in Federal reporting requirements or when State data systems undergo major changes. Table below assumes that one third of States must validate 10% of elements in each of two ''off years.''

Total Responses: 53 (Average in a year: 29.7).

Estimated Time Per Response: 1,600 hours for a full validation, conducted every third year (based on pilot program. Off-year burden will depend on number of elements needing re-validation.)

Total Burden Hours: 30,187 Hours.

Total Burden Cost (capital/startup): 121,792 hours, $3,524,660 (2,768 hours, $80,106 per each of 44 States).

Total Burden Cost (operating/maintaining): $873,612 ($29,414 per State).

CALCULATION OF ANNUAL BURDEN AND CAPITAL/STARTUP COST

	Frequency	Respondents	Hours per response	Total hours	Rate in $/hr	Total $	Average per State $
Calculation of Annual Burden							
Full Validation	Every 3rd year	53	1,600	84,800	28.94	2,454,112	46,304
Partial Validation	2 off years	36	160	5,760	28.94	166,694	4,630
3-Year Total	NA	NA	NA	90,560	28.94	2,620,806	
Ann. Avg.		29.7	1,016	30,187	28.94	873,602	29,414
Calculation of Capital/Startup Cost							
States Implement	One Time	44	4,500	121,792	28.94	3,524,660	80,106

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed in Washington, DC on March 16, 2001.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 01–7909 Filed 3–29–01; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and pubic comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contain in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT010001 (Mar 2, 2001)
- CT010003 (Mar 2, 2001)
- CT010004 (Mar 2, 2001)

Volume II

None

Volume III

Florida
- FL010001 (Mar. 2, 2001)

Volume IV

Michigan
- MI010076 (Mar. 2, 2001)
- MI010077 (Mar. 2, 2001)
- MI010078 (Mar. 2, 2001)
- MI010079 (Mar. 2, 2001)
- MI010080 (Mar. 2, 2001)
- MI010081 (Mar. 2, 2001)
- MI010082 (Mar. 2, 2001)
- MI010083 (Mar. 2, 2001)
- MI010084 (Mar. 2, 2001)
- MI010085 (Mar. 2, 2001)
- MI010087 (Mar. 2, 2001)
- MI010089 (Mar. 2, 2001)
- MI010091 (Mar. 2. 2001)
- MI010092 (Mar. 2. 2001)
- MI010093 (Mar. 2. 2001)
- MI010094 (Mar. 2. 2001)
- MI010095 (Mar. 2. 2001)
- MI010096 (Mar. 2. 2001)
- MI010097 (Mar. 2. 2001)
- MI010098 (Mar. 2. 2001)
- MI010099 (Mar. 2. 2001)
- MI010100 (Mar. 2. 2001)
- MI010101 (Mar. 2. 2001)

Volume V

Arkansas
- AR010003 (Mar. 2, 2001)
- AR010008 (Mar. 2, 2001)
- AR010046 (Mar. 2, 2001)
- KS010006 (Mar. 2, 2001)
- KS010007 (Mar. 2, 2001)
- KS010009 (Mar. 2, 2001)
- KS010012 (Mar. 2, 2001)
- KS010013 (Mar. 2, 2001)
- KS010015 (Mar. 2, 2001)
- KS010016 (Mar. 2, 2001)
- KS010018 (Mar. 2, 2001)
- KS010019 (Mar. 2, 2001)
- KS010063 (Mar. 2, 2001)
- KS010069 (Mar. 2, 2001)
- KS010070 (Mar. 2, 2001)

Nebraska
- NE010001 (Mar. 2, 2001)
- NE010003 (Mar. 2, 2001)
- NE010011 (Mar. 2, 2001)
- NE010019 (Mar. 2, 2001)

Texas
- TX010001 (Mar. 2, 2001)
- TX010003 (Mar. 2, 2001)
- TX010081 (Mar. 2, 2001)
- TX010096 (Mar. 2, 2001)
- TX010100 (Mar. 2, 2001)
- TX010114 (Mar. 2, 2001)

Volume VI

Alaska
- AK010001 (Mar. 2, 2001)

Idaho
- ID010001 (Mar. 2, 2001)
- ID010002 (Mar. 2, 2001)
- ID010003 (Mar. 2, 2001)

Washington
- WA010001 (Mar. 2, 2001)
- WA010002 (Mar. 2, 2001)
- WA010003 (Mar. 2, 2001)
- WA010007 (Mar. 2, 2001)
- WA010010 (Mar. 2, 2001)
- WA010011 (Mar. 2, 2001)
- WA010023 (Mar. 2, 2001)

Wyoming
- WY010005 (Mar. 2, 2001)
- WY010006 (Mar. 2, 2001)
- WY010007 (Mar. 2, 2001)

WY010009 (Mar. 2, 2001)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon And related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 22nd day of March 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–7621 Filed 3–29–01; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

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 pre-clearance 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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Survey of Occupational Injuries and Illnesses.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **Addresses** section of this notice.

DATES: Written comments must be submitted to the office listed in the **Addresses** section of this notice on or before May 29, 2001.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for ''furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics.'' The BLS fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating State statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the nation's primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce measures of the rate of change. These data are used to improve safety and health programs and measure the change in work-related injuries and illnesses.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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 Action

Office of Management and Budget clearance is being sought for the Survey of Occupational Injuries and Illnesses. Approximately 230,000 establishments will be surveyed annually. The clearance will include revisions to the survey to reflect changes in the Occupational Safety and Health Administration recordkeeping requirements. The survey will provide prenotification materials for the employers in the new samples who are usually exempt from recording injuries and illnesses, as well as the non-exempt employers in the survey.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Frequency: Annually.

Form	Total respondents	Total responses	Estimated time per response (hours)	Estimated total burden (hours)
BLS 9300	230,000	230,000	.40	91,666
Prenotification Package	175,000 out of 230,000	175,000 out of 230,000	1.35	236,000
Totals	230,000	230,000	1.4	327,666

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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 also will become a matter of public record.

Signed at Washington, DC this 23rd day of March, 2001.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 01–7911 Filed 3–29–01; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 14, 2001. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent. No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (NI–462–00–1, 13 items, 11 temporary items). Records relating to investigations and audits, including case files, working papers, feeder reports, general correspondence, an electronic tracking system, and final reports of audits. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of case files pertaining to significant investigations and final reports of significant audits.

2. Department of the Army, Department of Defense Civilian Personnel Management Service (N1–AU–99–6, 3 items, 3 temporary items). Records relating to determining and applying base rate schedules for wage grade employees paid out of non-appropriated funds, including wage

survey data maintained in electronic form that was previously approved for permanent retention. This schedule also increases the retention period of recordkeeping copies of wage survey data not maintained in electronic form that were previously approved for disposal. Electronic copies of documents created using electronic mail and word processing are also included.

3. Department of Commerce, National Institute of Standards and Technology (N1–167–01–1, 12 items, 12 temporary items). Records documenting agency Y2K activities and the development and operation of agency web sites. Included are Y2K planning, policy, and implementation records and such web-related records as change control requests, feedback and statistical reports, and design records. Electronic copies of documents created using electronic mail and word processing are also included.

4. Department of Defense, U.S. Court of Appeals for the Armed Forces (N1–330–01–1, 2 items, 2 temporary items). Judges' papers relating to cases. Records include memoranda that are circulated within or between judges' chambers, along with draft opinions, votes, and other comments that are circulated within the entire court but are not included with the judges' voting sheets. Also included are electronic copies of documents created using electronic mail and word processing.

5. Department of Defense, Defense Logistics Agency (N1–361–98–1, 25 items, 15 temporary items). Defense Manpower Data Center records relating to such matters as outreach referral, joint duty assignment management, Federal creditor agency debt collection, and reenlistment eligibility. Included are inputs, electronic master files, system documentation, and outputs along with U.S. Postal Service records used for computer matching. Also included are inputs and outputs of the data bases for which the master file and system documentation are proposed for permanent retention. Records proposed for permanent retention relate to employment and pay matters, noncombatant evacuation and repatriation, criminal and non-criminal incident reports, personnel surveys and census data, and personnel eligibility for benefits.

6. Department of Energy, Agency-wide (N1–434–01–1, 1 item, 1 temporary item). Unidentified and deteriorated medical x-rays. This schedule authorizes the agency to immediately destroy deteriorating medical x-rays that cannot be identified, interpreted, or copied and may pose a health hazard.

7. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–00–1, 3 items, 3 temporary items). Radiation dose reconstruction records from the Radiation Studies Branch of the National Center for Environmental Health. Records consist of electronic data and system documentation relating to radiation dose reconstruct-ion computer models. Final reports generated from models were previously approved for permanent retention.

8. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–01–2, 2 items, 1 temporary item). Electronic copies of documents used to revise and update the agency's examination handbook, which is used as a guide in reviewing the financial soundness and safety of government-sponsored enterprises. Recordkeeping copies of the handbook are proposed for permanent retention.

9. Department of Justice, Drug Enforcement Administration (N1–170–01–2, 8 items, 8 temporary items). Records relating to the agency's Y2K initiative, including testing plans, strategies, test results, compliance applications, Inspector General reports, consultant contracts, and correspondence with vendors, the Department of Justice, the Office of Management and Budget, and the General Accounting Office. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of Labor, Employment Standards Administration (N1–448–01–1, 2 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing that are associated with the subject files of the Assistant Secretary for the Employment Standards Administration for the period 1993–2000. Recordkeeping copies of these files are proposed for permanent retention.

11. Department of Transportation, Research and Special Programs Administration (N1–467–00–2, 8 items, 7 temporary items). Records relating to monitoring the packaging and transportation of hazardous materials, including such records as paper and optical disk copies of civil penalty case files, general correspondence, and electronic copies of documents created using electronic mail and word processing. Record-keeping copies of operations manuals are proposed for permanent retention. Significant civil penalty case files will be brought to NARA's attention for appraisal on a case-by-case basis.

12. Department of the Treasury, Office of the Comptroller of the Currency (N1–101–01–1, 6 items, 6 temporary items). Inputs, outputs, electronic master files, and system documentation associated with an electronic information system relating to the supervision and examination of community, mid-size, and credit card banks.

13. Department of Veterans Affairs, Office of Financial Management (N1–15–01–2, 4 items, 4 temporary items). Records pertaining to the development of web based application systems. Included are such records as budget estimates, cost justifications, progress reports, software requirements, testing results, and reports related to maintenance. Also included are electronic copies of documents created using electronic mail and word processing.

14. General Services Administration, Office of Inspector General (N1–269–01–1, 15 items, 13 temporary items). Paper and optical disk copies of investigative case files lacking historical significance. Also included are such records as an electronic tracking system and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of investigative case files that attract national or regional media attention, result in a Congressional investigation, result in substantive changes to agency policy and procedures, or involve senior agency officials are proposed for permanent retention.

15. National Labor Relations Board, Office of the Inspector General (N1–25–01–1, 8 items, 7 temporary items). Records documenting such matters as audits and inspections, routine investigations, and allegations that do not result in an investigation or the establishment of a formal case file. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of selected investigative case files are proposed for permanent retention. Semi-annual reports of the Inspector General were previously approved for permanent retention.

Dated: March 19, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–7886 Filed 3–29–01; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

AGENCY: National Council on Disability.

ACTION: Quarterly meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability (NCD). Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

QUARTERLY MEETING DATES: May 21–23, 2001, 8:30 a.m. to 5 p.m.

LOCATION: Embassy Suites Hotel Crystal City, 1300 Jefferson Davis Highway, Arlington, Virginia; 703–979–9799.

CONTACT INFORMATION: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: NCD is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

LANGUAGE TRANSLATION: In accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at the meeting. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: In accordance with the Government in the Sunshine Act and NCD's bylaws, this quarterly meeting will be open to the public for observation, except where NCD determines that a meeting or portion thereof should be closed in accordance with NCD's regulations pursuant to the Government in the Sunshine Act. A majority of NCD members present shall determine when a meeting or portion thereof is closed to the public, in accordance with the Government in the Sunshine Act. At meetings open to the public, NCD may determine when non-members may participate in its discussions. Observers are not expected to participate in NCD meetings unless requested to do so by an NCD member and recognized by the NCD chairperson.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session (closed)
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on March 28, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–8018 Filed 3–28–01; 2:07 pm]

BILLING CODE 6820–MA–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: April 24, 2001, 8 a.m.–5:30 p.m.

Place: Room 310, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George Hazelrigg, Program Director, DMII, (703) 292–8330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate ITR (Information Technology Research) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary of confidential nature, including technical information, financial data such as salaries,and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–7925 Filed 3–29–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date/Time: April 25–26, 2001, 8:30 a.m. to 5:00 p.m.

Place: Room 970, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Paul Werbos, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: (703) 292–8339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to program announcement (NSF 00–2).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–7923 Filed 3–29–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date/Time: April 19–20, 2001, 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Robert Robinson, Acting Program Director for Magnetosphric Physics Program and Dr. Sunanda Basu, Program Director for Aeronomy; Room 775, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 292–8518.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate GEM and MI Coupling proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–7926 Filed 3–29–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Information and Intelligent Systems (#1200):

Date/time	Place
April 9–10, 2001; 8 a.m.–5 p.m.	National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.
April 23–24, 2001; 8 a.m.–5 p.m.	National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.
April 26–27, 2001; 8 a.m.–5 p.m.	Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.
April 30 to May 1, 2001; 8 a.m.–5 p.m.	National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meetings: Closed.

Contact Person: Michael Lesk, National Science Foundation, 4201 Wilson Boulevard, Room 1115, Arlington, VA 22230, (703) 292–8930.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–7924 Filed 3–29–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (1203).

Date/Time: April 23–24, 2001; 8 a.m.–6 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Guebre X. Tessema, Program Director, National Facilities and Instrumentation, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4943.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for the FY2001 Instrumentation for Materials Research (IMR) and Major Research Instrumentation (MRI) Programs.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 27, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–7922 Filed 3–29–01; 8:45 am]

BILLING CODE 7555–01–M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: The purpose of this document is to publish notice of a new Privacy Act system of records, USPS 400.010, eServices Customer Program Records—USPS eServices Registration System (eRS). The new system contains records about individuals and companies who register to use Postal Service Internet-based services.

DATES: Any interested party may submit written comments on the proposed new system of records. This proposal will become effective without further notice on May 9, 2001, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Finance Administration/FOIA, United States Postal Service, 475 L'Enfant Plaza SW., Rm 8141, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Faruq at (202) 268–2608.

SUPPLEMENTARY INFORMATION: The United States Postal Service (USPS) is developing a variety of services that have an Internet-based customer interface and/or service capability. USPS eServices Registration provides a centralized infrastructure platform and method for customers to register with the USPS in order to use these services. This notice establishes a new Privacy Act system of records, USPS 400.010, the USPS eServices Registration System, to cover records collected and maintained as a result of customers registering for USPS Internet-based services.

To register, a customer is required to fill out an e-Form presented via the eServices Registration portion of the USPS Web site (*http://www.usps.com*).

The USPS eServices Registration System standardizes a customer's registration process for all services that use it as a registration interface. It provides a customer the ability to register through one interface, making the registration process for various USPS applications convenient and efficient. While capturing application-specific user information for each online service offered by the USPS, the

eServices Registration System will maintain a look and feel that is consistent with other USPS Web site interfaces.

When a customer registers for any of the services supported by eServices Registration, a single customer registration information file is created for the registering customer. eServices Registration manages the customer information that has been provided and cross-references common data elements between services from this record as authorized by the customer.

eServices Registration will cross reference data between applications so customers are not required to re-enter the same information each time they sign up for an additional service. If a user attempts to use an application, but has not previously registered for the service, the customer information specific to that application will be pre-populated with the user's current information, and the user will be required to enter only that additional information that is still needed by the new application. Once registered, the user will also be allowed to edit the information at any time.

Because the USPS eServices Registration System stores data in a central database, when a customer updates the registration information, the changes automatically become available for all applications that have authorization to access the information. In addition, through interconnection with (a) the USPS channel for customers who are moving to file an official Change of Address and (b) the Address Management System, each customer's address will be automatically standardized using approved postal formats and will be updated across applications recorded in the eRS.

General routine-use statements b, e, f, and j, listed in the prefatory statement at the beginning of the Postal Service's published system notices, apply to this system of records and are applicable to most of the Postal Service's systems of records in that they are disclosures routinely necessary to conduct business. These include the need to disclose information in litigation involving the Postal Service; to an agency contractor fulfilling an agency function; to a congressional office at the request of the records subject; and to outside auditors in connection with an audit of Postal Service finances. These general routine uses were last published in the **Federal Register** on October 26, 1989 (54 FR 43654–43655).

In addition, five routine uses have been added: Routine Use 1 permits disclosure to the Postal Service technology and/or service provider who is acting as an agent on behalf of the Postal Service. Routine Use 2 permits disclosure to a payee or financial institution for bill payment in conjunction with USPS electronic bill presentment and payment services. Routine Use 3 permits disclosure to an authorized credit bureau or another government agency for the purpose of identity verification. Routine Use 4 permits disclosure for law enforcement purposes, but only pursuant to a federal search warrant. Routine Use 5 permits disclosure pursuant to a federal court order.

The new system is not expected to have an adverse effect on individual privacy rights. Any contractor that maintains information collected by this system is made subject to the Privacy Act in accordance with subsection (m) of the Act and is required to apply appropriate protections subject to audit and inspection by the Postal Inspection Service. Procedures are in place to verify identity of individuals, the accuracy of information maintained, and the security of information maintained and transmitted.

USPS envisions that certain services will (a) require eServices Registration to request construction of a USPS-approved Public Key Infrastructure (PKI)-based digital certificate from a Certificate Authority and (b) electronically deliver the digital certificate to customers in order for them to use the service. As part of this process, customers will be required to provide information and complete the necessary steps that enable their identity to be adequately verified. Customers wishing to use this type of service must agree to and comply with the USPS subscriber agreement that applies to the USPS-approved digital certificate(s) issued to them, as well as any service-specific terms and conditions that provide for enrollment to the requested service, if identity or other information cannot be verified. Customers must further accept the responsibility, if issued a USPS-approved digital certificate, to protect both their system and their USPS PKI private key access passwords, not share them with others, and report any suspected compromise of their USPS PKI private key as directed.

Security controls have been applied to protect the information during transmission and physical maintenance. The system is housed within a secure facility in a restricted area. Access is controlled by an installed security software package, logon identifications and passwords, and operating system controls. Information is transmitted in a secure session established by Secure Socket Layer (SSL) equivalent, or better, technology. These technologies encrypt or scramble the transmitted information so it is virtually impossible for anyone other than the Postal Service or its contracted agent to read it while in transit.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 400.010

SYSTEM NAME:

eService Customer Program Records—USPS eServices Registration System (eRS) Records, USPS 400.010.

SYSTEM LOCATION:

Office of Chief Technology Officer; National Customer Support Center (Memphis, TN), Postal Headquarters; and contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who register for USPS services via the USPS Web site: *www.usps.com* will use the Services Registration System (eRS) as its registration platform.

CATEGORIES OF RECORDS IN THE SYSTEM:

Depending on the service or product requested by the customer, this information is collected in order to provide that service or product and, if necessary, to verify the customer's identity. Customer-provided registration information captured and stored within eServices Registration will include username, password, verification question and answer, customer name, home/mailing address, e-mail address(es), and a promotional advertising acceptance (opt-in) answer. Depending on the service(s) requested by the customer, eRS information may also include secondary mailing address(es), employer name and address, date of birth, tax identification number, home and work phone number, fax phone number, public key data related to the customer, bank account information (name, type, account number, routing/transit number), credit card information (number, expiration date, type), driver's license information or state ID information (number, state, and expiration date), military ID information (number, branch, expiration date), or passport/visa information (number, expiration date, and issuing country).

In some cases, depending on the service or product requested by the customer, eServices Registration may collect a customer's Social Security Number as part of the registration process in order for the application to provide the customer the desired product or service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

Information in this system is used to provide online registration capability to postal customers who request an Internet-based eService, and to provide that service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine-use statements b, e, f, and j, listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses of information from this system are as follows:

1. Disclosure to a Postal Service technology and/or service provider who is acting as an agent on behalf of the Postal Service, such as a Registration Authority or Customer Care/helpdesk operator.

2. Disclosure to a payee or financial institution for billing payment.

3. Disclosure to an authorized credit bureau or government agency maintaining a system of records (Social Security Administration, Health Care Finance Administration, etc.) for the purpose of identity verification.

4. Disclosure for law enforcement purposes to a government agency, either federal, state, local, or foreign, but only pursuant to a federal warrant duly issued under Rule 41 of the Federal Rules of Criminal Procedure. See Administrative Support Manual 274.6 for procedures relating to search warrants.

5. Disclosure pursuant to the order of a federal court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated database, computer storage media, and paper forms.

RETRIEVABILITY:

Information is retrieved by customer identification name or number, email address, phone number, customer name, and/or physical address.

SAFEGUARDS:

Paper records and computer storage tapes and disks are maintained in controlled-access areas or under general scrutiny of program personnel. Computers containing information are located in controlled-access areas with personnel access controlled by a cypher lock system, card key system, or other physical access control method, as appropriate. Authorized persons must be identified by a badge. Computer systems are protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and user identifications, and file management. Online data transmission is protected by encryption. Contractors must provide similar protection subject to operational security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

Personal enrollment information stored in the eServices Registration database is maintained until the customer cancels the profile record or the profile information has not been accessed for any purpose for a period of 12 months; the information is then archived for 2 years. If an individual has been issued a USPS digital certificate, the maintenance of that person's profile information in the eRS database will be extended beyond this 12-month disuse period, to coincide with the certificate's expiration date. Thereafter, the information is archived on nonportable computer hard disk or magnetic tape for seven (7) years. Customers who have requested postal services or products requiring in-person identity authentication will have a USPS Form 2001, Identity Validation Form, maintained on file as part of this record system. The information on this paper record will be maintained for seven (7) years. At the end of the retention period, data on magnetic tape is destroyed by over-recording, data on hard disk is deleted or over-recorded, and, if issued, USPS Form 2001 is shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Technology Officer Senior Vice President, United States Postal Service, 475 L'Enfant Plaza SW RM 2100, Washington DC 20260–4400.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name and address or other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers registering for USPS eServices.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–7929 Filed 3–29–01; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 23c–3 and Form N–23c–3; SEC File No. 270–373; OMB Control No. 3235–0422]

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 23c–3 under the Investment Company Act of 1940 (17 CFR 270.23c–3) is entitled: ''Repurchase of Securities of Closed-End Companies.'' The rule permits certain closed-end investment companies (''closed-end funds'' or ''funds'') periodically to offer to repurchase from shareholders a limited number of shares at net asset value. The rule includes several reporting and recordkeeping requirements. The fund must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'')) attached to Form

N–23c–3 [17 CFR 274.211], a cover sheet that provides limited information about the fund and the type of offer the fund is making.[1] The fund must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act (15 U.S.C. 80a–24) and the rules that implement section 24.[2]

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer, which may differ from previous offers on such matters as the maximum amount of shares to be repurchased (the maximum repurchase amount may range from 5% to 25% of outstanding shares). The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N–23c–3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirements that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end investment company is intended to facilitate the review of these materials by the Commission or the NASD to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

The Commission estimates that 23 funds currently rely upon the rule. The Commission estimates that each fund spends approximately 80 hours annually in preparing, mailing, and filing shareholder notifications for each repurchase offer, 4 hours annually in preparing and filing Form N–23c–3, 6 hours annually in preparing disclosures in the annual shareholder report concerning the fund's repurchase policy and recent offers, 28 hours annually in preparing procedures to protect portfolio liquidity, and 8 hours annually in preforming subsequent reviews of these procedures. The total annual burden of the rule's paperwork requirements for all funds thus is estimated to be 2898 hours. This represents an increase of 1638 hours from the prior estimate of 1260 hours. The increase results primarily from an increase in the number of funds relying upon the rule from 10 to 23 funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collection of information requirements of the rule is mandatory only for those funds that rely on the rule in order to repurchase shares of the fund. The information provided to the Commission on Form N–23c–3 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 26, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–7891 Filed 3–29–01; 8:45 am]

BILLING CODE 8010–01–M

[1] Form N–23c–3 requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

[2] Rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3], however, would generally exempt the fund from the requirement when the materials are filed instead with the National Association of Securities Dealers (''NASD''), as nearly always occurs under NASD procedures, which apply to the underwriter of every fund.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24915; File No. 812–12364]

Golden American Life Insurance Company, et al.

March 26, 2001.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

Applicants: Golden American Life Insurance Company (''Golden American''), Separate Account B of Golden American (the ''Account'') and Directed Services, Inc. (''DSI'') (together, the ''Applicants'').

Summary of the Application: Applicants seek an order of the Commission, pursuant to Section 6(c) of the Act to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of deferred variable annuity contracts which Golden American currently issues (the ''Contracts'') and substantially similar variable annuity contracts that Golden American may issue in the future (''Future Contracts'') as well as any other separate accounts of Golden American and its successors in interest (''Future Accounts'') that support in the future variable annuity contracts that are similar in all material respects to the Contracts and principal underwriters of such contracts (''Future Underwriters'').

Filing Date: The application was filed on December 13, 2000, and amended and restated on March 23, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a

hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 16, 2001, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Linda Senker, Esq., Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380. Copies to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Golden American is a stock life insurance company originally incorporated under laws of Minnesota and later redomiciled in Delaware. Golden American is engaged in the business of writing annuities, both individual and group, in all states (except New York) and the District of Columbia. Golden American is a subsidiary of Equitable of Iowa Companies, Inc. (''Equitable of Iowa''). Golden American is ultimately controlled by ING Group N.V., a global financial services holding company.

2. Golden American established the Account as a segregated investment account under Delaware law. The assets of the Account support one or more varieties of variable annuity contracts, including the Contracts. The assets of the Account attributable to the Contracts and any other variable annuity contracts through which interests in the Account are issued are owned by Golden American but are held separately from all other assets of Golden American, for the benefit of the owners of, and the persons entitled to payment under, Contracts issued through the Account. Consequently, such assets are not chargeable with liabilities arising out of any other business that Golden American may conduct. Income, gains and losses, realized or unrealized, from each subaccount of the Account, are credited to or charged against that subaccount without regard to any other income, gains or losses of Golden American. The Account is a ''separate account'' as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust. Interests in the Account offered through the Contracts have been registered under the Securities Act of 1933 on Form N–4.

3. DSI is a wholly-owned subsidiary of Equitable of Iowa. It serves as the principal underwriter of Golden American separate accounts registered as unit investment trusts under the Act, including the Account, and is the distributor of the variable life insurance contracts and variable annuity contracts issued through such separate accounts, including the Contracts. DSI is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the ''NASD'').

4. The Contracts make available a number of subaccounts of the Account to which owners may allocate net premium payments and associated bonus credits (described below) and to which owners may transfer contract value. The Contracts also offer fixed-interest allocation options under which Golden American credits guaranteed rates of interest for various period (including interest crediting mechanisms which entail the imposition of ''market value'' adjustments under certain circumstances). The Contracts offer a variety of fixed and variable annuity payment options to owners. In the event of an owner's (or, in certain circumstances, an annuitant's) death prior to the annuity commencement date, beneficiaries may elect to receive death benefits in the form of one of the annuity payment options instead of a lump sum.

5. The Contracts generally may only be purchased with a minimum initial premium of $10,000 or more ($1,500 to certain employee benefit plans). Golden American may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of $40 that Golden American deducts on each Contract Anniversary and upon a full surrender of a Contract, a daily administrative charge deducted from the assets of the Account at an annual rate of 0.15% of the Account's average daily net assets and a daily mortality and expense risk charge deducted from the assets of the Account at annual rates ranging from 1.30% to 1.75% of the Account's average daily net assets. Three optional death benefit riders are available with the Contract: (1) The Annual Ratchet enhanced death benefit, (2) the 7% Solution enhance death benefit and (3) the Max 7 enhanced death benefit. If purchased, the charge for the optional death benefit riders in included in the mortality and expense risk charge. The Contracts also provide for a charge of $25 for each transfer of contract value in excess of 12 per contract year. Lastly, the Contracts have a surrender charge in the form of a contingent deferred sales charge (''CDSC''), which is equal to the percentage of each premium payment surrendered or withdrawn, and declines from 8% during the first four years of the premium payment to 0% after 9 full years since the premium payment. No CDSC applies to contract value representing an annual free withdrawal amount or to contract value in excess of aggregate premium payments (less prior withdrawals of premium payments).

6. If an owner dies before the annuity commencement date, the Contracts provide, under most circumstances, for a death benefit payable to a beneficiary. If the owner is not a natural person, then the death benefit is payable upon the death of an annuitant.

7. Golden American offers a bonus credit provision under the Contracts, pursuant to which it credits an owner's contract value with an additional amount when a net premium payment is applied. Under the bonus credit provisions, Golden American credits contract value with an amount that is a percentage is currently 5% for issue ages under age 70 and 4% for issue age 70 and over. In the future Golden American may credit contract value with amounts that are a greater percentage of each premium payment. If above 4%, Golden American also may reduce that percentage upon 30 days advance written notice, but will never reduce it below 4%. Applicants acknowledge that the exemptive order requested herein will not provide an exemption for a bonus credit recapture in excess of 5%.

8. Under the bonus credit provision, Golden American recaptures or retains

the credited amount in the event that the owner exercises his or her cancellation right during the ''free look'' period. Also, in computing death benefits, Golden American may ''recapture'' bonus credits applied within twelve months prior to the date as of which the death benefit is computed. Finally, in the event of a surrender or withdrawal of contract value where the surrender charge is waived due to the owner's receipt of qualified extended medical care or date of such diagnosis of a qualifying terminal illness (as defined in the contract), Golden American will ''recapture'' all bonus credits applied during the twelve months prior to the receipt of such care or date of such diagnosis (a ''waiver event'').

9. Applicants request that the Commission issue an order pursuant to section 6(c) of the Act, exempting them as well as Future Accounts and Future Underwriters from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of the Contracts.

Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule promulgated thereunder if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of section 27 provides that section 27 does not apply to any registered separate account supporting variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of the Account because, until the appropriate recapture period expires, Golden American retains the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, Applicants argue that if Golden American recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. Applicants state that Golden American would grant bonus credits out of its general account assets and the amount of the credits (although not the earnings on such amounts) remain Golden American's until such amounts vest with the owner. Thus, Applicants argue that to the extent that Golden American may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of an Account's assets.

4. Applicants state that the bonus credit recapture provisions are necessary for Golden American to offer the bonus credits. Applicants argue that it would be unfair to Golden American to permit owners to keep their bonus credits upon their exercise of the Contracts ''free look'' provision. Because no CDSC applies to the exercise of the ''free look'' provision. Applicants state that the owner could obtain a quick profit in the amount of the bonus credit at Golden American's expense by exercising that right. Likewise, Applicants argue that because no additional CDSC applies upon the death or an owner (or annuitant), and no CDSC applies upon a waiver event, such a death or waiver event shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at Golden American's expense.

5. Applicants represent that it is not administratively feasible to track the unvested value of bonus credits in the Account, and Golden American deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge and the daily administrative charge paid by any owner is greater than that which he or she would pay without the bonus credit.

6. Applicants assert that the dynamics of Golden American's bonus credit provisions would not violate sections 2(a)(32) or 27(i)(2)(A) of the Act. Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company. Rule 22c–1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time such amount is calculated. Specifically, Rule 22c–1, in pertinent part, prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security of redemption, or of an order to purchase or sell such security.

8. Golden American's recapture of any bonus credit could be viewed as the redemption of a contractowner's interest in the Account at a price above net asset value. Applicants content, however, that the bonus credits do not violate Rule 22c–1 under the Act. Applicants argue that bonus credit provisions do not give rise to either of the evils that Rule 22c–1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or other unfair results, including speculative trading practices.

9. Applicants argue that the evils prompting the adoption of Rule 22c–1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values, of outstanding shares.

10. Applicants argue that the proposed bonus credit provisions pose no such threat of dilution. Applicants

contend that an owner's interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. Applicants assert that recaptures of bonus credits result in a redemption of Golden American's interest in an owner's contract value or in the Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that Golden American paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value.

11. Applicants contend that Rule 22c–1 should have no application to the bonus credit because neither of the harms that it was intended to address arise in connection with the proposed bonus credit provisions. nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek an exemption from Rule 22c–1.

12. Applicants also submit that even if the proposed bonus credit provisions would conflict with sections 2(a)(32) or 27(i)(2)(A) of the Act or Rule 22c–1 thereunder, the Commission should grant the exemptions that they request because the bonus credit provisions are generally favorable and beneficial for owners. The recapture provisions of the Contracts temper this benefit somewhat, but owners, unless they (or, in certain circumstances, annuitants) die, retain the ability to avoid the recapture. Although there is a downside in declining markets to bonus credits if the owner (or annuitant) dies or if the owner exercises his to her cancellation right during the ''free look'' period or if the owner surrenders the Contract or withdraws Contract value where the surrender charge is waived due to a ''waiver event'', the bonus credit provisions (including their dynamic elements) are fully disclosed in the prospectuses for the Contracts. Applicants argue that the recapture provisions do not, on balance, diminish the overall value of the bonus credit provisions.

13. Applicants state that the Commission's authority under section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption thereunder that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, Golden American's successors in interest, Future Accounts and Future Underwriters from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. Applicants submit that the exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

14. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about the Account and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in the application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Conclusion

Applicants represent that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–7892 Filed 3–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44099; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealer, Inc., the Pacific Exchange and the Boston, Chicago, Philadelphia, and Cincinnati Stock Exchanges

March 23, 2001.

I. Introduction

On March 19, 2001, the National Association of Securities Dealers, Inc. (''NASD''), on behalf of itself and the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (hereinafter referred to as the ''Participants'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposal to extend the operation of a joint transaction reporting plan (''Plan'') [1] for Nasdaq/National Market (''Nasdaq/NM'') securities traded on an exchange on an unlisted or listed basis.[2] The proposal would extend the effectiveness of the Plan through May 31, 2001. The Commission also is extending certain exemptive relief as described below. The March 2001 Extension Request does not seek permanent approval of the Plan

[1] *See* Letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Jonathan G. Katz, Secretary, Commission, dated March 16, 2001 (''March 2001 Extension Request''). The March 2001 Extension Request also request that the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934, as amended (''Act''). 15 U.S.C. 78a *et seq.* The signatories to the Plan are the Participants for purposes of this release; however, the BSE joined the Plan as a ''limited participant'' and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange Inc. (''Amex'') was a Participant but withdrew its participation from the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 7.

because the Participants currently are negotiating certain amendments to the Plan for which they will seek approval in the future.[3]

II. Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[4] The Commission originally approved the Plan on a pilot basis on June 26, 1990.[5] The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[6]

III. Description of the Plan

The Plan provides for the collection from Plan Participants, and the consolidation and dissemination to vendors, subscribers and others, of quotation and transaction information in ''eligible securities.''[7] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer (''BBO''); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[8]

IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis, the Commission granted an exemption to vendors from Rule 11Ac1–2 under the Act regarding the calculation of the BBO[9] and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. In the March 2001 Extension Request, the Participants ask that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved. In addition, in the March 2001 Extension Request, the Participants request that the Commission grant an extension of the exemptive relief described above to the BSE until May 31, 2001.

V. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. The Commission continues to solicit comment regarding the BBO calculation, the trade through rule and any issues presented by changes occurring in the market place.Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by April 20, 2001.

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through May 31, 2001, is appropriate and in furtherance of Section 11A of the Act.[10] The Commission has previously stated that a revised Plan must be filed with the Commission by July 19, 2001, or the Commission will amend the Plan directly.[11] The Participants represent in their proposal that they are negotiating certain amendments to be included in an interim plan, which would be effective from the date of Commission approval, and no later than the expiration of this extension on May 31, 2001, until July 19, 2001. The Participants also represent that they are considering a permanent plan (that would include a fully viable alternative exclusive or non-exclusive securities

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[3] In accordance with the Commission's statements in its order approving the establishment of the Nasdaq Order Display Facility and Order Collector Facility (''SuperMontage''), the Participants represent that they are revising the Plan. (*See* Securities Exchange Act Release No. 43863 (January 19, 2001) 66 FR 8020 (January 26, 2001).) Using a two-pronged approach, the Participants are negotiating certain amendments to be included in an interim plan, which will be effective until July 19, 2001. The Participants also are considering issues regarding a new permanent plan that could include a full viable alternative exclusive or non-exclusive securities information processor. Accordingly, at this time, the Participants only are requesting an extension of the current Plan until May 31, 2001. *See supra* note 1.

[4] *See* Section 12(f)(2) of the Act.

[5] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (''1990 Plan Approval Order'').

[6] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) (''November 1995 Extension Order''); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); Securities Exchange Act Release No. 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); Securities Exchange Act Release No. 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); and Securities Exchange Act Release No. 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000).

[7] The Plan defines ''eligible security'' as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, in response to a request from the CHX, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. *See* May 1999 Approval Order, *supra* note 7. On November 17, 2000, the Commission noticed and requested comment on a proposal by the PCX to expand the maximum number of securities eligible to trade to include all Nasdaq/NM securities. *See* Securities Exchange Act Release No. 43545 (November 9, 2000), 65 FR 69581 (November 17, 2000).

[8] The full text of the Plan, as well as a ''Concept Paper'' describing the requirements of the Plan, are contained in the original filing, which is available for inspection and copying in the Commission's public reference room.

[9] Rule 11Ac1–2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1–2 under the Act provides that ''in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or offer * * * shall be computed by ranking all such identical bids or offers * * * first by size * * * then by time.'' The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/time/size basis.

[10] In approving this extension, the Commission has considered the extension's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[11] *See supra* note 4.

information processor) to be filed with the Commission on July 19, 2001. In light of the current negotiations regarding the existing Plan and the representations of the Participants in their request to the Commission, the Commission approves the requested extension of the Plan until May 31, 2001.

The Commission notes that the revised Plan, which must be filed with the Commission by July 19, 2001, must provide for either (1) a fully viable alternative exclusive securities information processor (''SIP'') for all Nasdaq securities, or (2) a fully viable alternative nonexclusive SIP in the event that the Plan does not provide for an exclusive SIP. If the revised Plan provides for an exclusive consolidating SIP, a function currently performed by Nasdaq, the Commission believes that, to avoid conflicts of interest, there should be a presumption that a Plan participant, and in particular Nasdaq, should not operate such exclusive consolidating SIP. The presumption may be overcome if: (1) the Plan processor is chosen on the basis of bona fide competitive bidding and the participant submits the successful bid; and (2) any decision to award a contract to a Plan Participant, and any ensuing review or renewal of such contract, is made without that Plan Participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP should operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by the Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that qualifies, and to disseminate transaction information and individually identified quotation information for these members through the SIP.

In addition, the revised Plan should resolve the issues, which have been pending since the implementation of the Plan, of whether there is a need for an intermarket linkage for order routing and execution, whether there is a need for a trade-through rule to facilitate the trading of OTC securities pursuant to UTP, and how the BBO calculation should be determined for securities traded pursuant to the Plan.

Furthermore, the revised Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters [12] as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1–2 under the Act until the earlier of May 31, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3–1 under the Act to the BSE through May 31, 2001. The Commission believes that the temporary extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

VII. Conclusion

It is Therefore Ordered, pursuant to sections 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through May 31, 2001, and certain exemptive relief through May 31, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[12] *See also* discussion in the SuperMontage order, *supra* note 4.

[13] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44095; File No. SR–CBOE–01–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Marketing Fees

March 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make a change to its Marketing Fee, under its Fee Schedule, to exempt call/put ''combo'' transactions from the Marketing Fee. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Last year, the Exchange imposed a $0.40 per contract marketing fee to collect funds to be used by the appropriate Designated Primary Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Maker (''DPM'') for marketing its service and attracting order flow to the CBOE.[3]

Currently, this marketing fee is applicable to all market-markers to market-maker options transactions.[4] It has, however, recently come to the attention of the Exchange that this marketing fee makers it unprofitable for market makers to do reversals and conversions in which a market maker trades a given amount of an underlying security against an equivalent number of call/put ''combos,'' *i.e.,* buying the call and selling the put (or vice versa) of the same option class in equal quantities with the same strike price in the same expiration month. In the case of conversion, the market maker buys the put, sells the call, and buys the underlying security. For reversals, the market maker sells the put, buys the call, and sells the underlying security.

Conversions and reversals are popular trading strategies that contribute to market liquidity, but they usually have to be done at a smaller profit margin that other types of trades. When the $0.40 marketing fee is imposed upon the call/put ''combo'' transactions, the trades frequently cease to be profitable to execute on the Exchange.

Consequently, the Exchange has decided to exempt from the Marketing Fee section of its Fee Schedule all such call/put ''combo'' transactions. The Exchange represents that it will use trade data to determine qualifying transactions. While the Exchange has no current plans to require documentation to show that specific trades qualify for this exemption, the Exchange reserves the right to do so in the future.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(4) of the Act[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange had neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder,[8] upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–01–09 and should be submitted by April 20, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[3] *See* Securities Exchange Act Release No. 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000) File No. SR–CBOE–00–28).

[4] *See id.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii)

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44096; File No. SR–NASD–01–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq By-Law Definitions of ''Broker'' and ''Dealer''

March 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4[2] thereunder, notice is hereby given that on March 19, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

Nasdaq is proposing to amend the definitions of ''broker'' and ''dealer'' in Article I of the By-Laws of Nasdaq to conform with the recent changes to the definitions of ''broker'' and ''dealer'' in the Act, as amended by the Gramm-Leach-Bliley Act of 1999 (''GLBA'').[4] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

By-Laws of the NASDAQ Stock Market, Inc.

Article I—Definitions

* * * * *

(c) ''broker'' *shall have the same meaning as in section 3(a)(4) of the Act;* [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

account of others, but does not include a bank;]

* * * * *

(f) ''dealer'' *shall have the same meaning as in section 3(a)(5) of the Act;* [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the definitions of ''broker'' and ''dealer'' in the By-Laws of Nasdaq to conform to the definitions of ''broker'' and ''dealer'' in the Act. Under the proposal, the definitions of ''broker'' and ''dealer'' in the By-Laws will incorporate by reference the definitions of these terms as set forth in sections 3(a)(4) and 3(a)(5), respectively, of the Act.[5]

Nasdaq is proposing to amend the definitions of ''broker'' and ''dealer'' in its By-Laws in anticipation of changes being made to the Act's definitions of these terms pursuant to the GLBA. Specifically, Title II of the GLBA, which becomes effective on May 12, 2001, eliminates the long-standing general exception for banks from the definitions of ''broker'' and ''dealer'' in the Act. In place of the general exception for banks, the GLBA enumerates a series of exceptions from the definitions of ''broker'' and ''dealer'' for certain specified banking activities.[6]

The proposed rule change is necessary to ensure that the definitions of ''broker'' and ''dealer'' in the Nasdaq By-Laws remain consistent with the definitions in the Act. Moreover, because the proposed rule change would incorporate by reference the definitions of ''broker'' and ''dealer'' as set forth in the Act, it would eliminate the need for any conforming amendments to the definitions of these terms in the By-Laws in the event Congress amends the Act's definitions in the future.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and, in general, to protect investors and the public interest. Nasdaq believes that the proposal, which conforms the Nasdaq By-Law definitions of ''broker'' and ''dealer'' with those in the Act, is consistent with these purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by Nasdaq as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[9] Nasdaq has stated that, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 12, 2001 (more than 30 days from March 19, 2001, the date on which it was filed), and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become immediately effective.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–01–18 and should be submitted by April 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–7861 Filed 3–29–01; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78c(a)(4) and (a)(5).

[6] *See id.*

[7] In approving the proposed rule change, the Board of Directors of Nasdaq recognized that any future amendments to the Act's definitions of ''broker'' or ''dealer'' would, in effect, result in an identical change to the definitions of these terms in the Nasdaq By-Laws, without requiring any further action by the Board.

[8] 15 U.S.C. 78o–3(b)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44098; File No. SR–NASD–01–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Transaction Credit Pilot Program

March 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting the establishment or change of a due, fee or other charge imposed by the Association under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2),[4] which renders the rule effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010, System Services, to extend Nasdaq's transaction credit pilot program (''Program'') for an additional three months for Tape A and B reports. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7010. System Services

(a)–(b) No Change

(c)(1) No Change

(2) Exchange-Listed Securities Transaction Credit. For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and ending with the calendar quarter starting on [January 1] *April 1,* 2001.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend through June 30, 2001, its pilot program to provide a transaction credit[5] to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket[6] is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex''). The InterMarket competes with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE'') for retail order flow in stocks listed on the NYSE and the Amex. The NASD collects trade reports from broker-dealers trading these securities in the over-the-counter (''OTC'') market and provides the trade reports to the Consolidated Tape Association (''CTA'') for inclusion in the Consolidated Tape. As a participant in the CTA Plan, the NASD is entitled to a portion of the revenue that the CTA generates by selling this market data information. NASD's share of the revenues is based on trades that it reports on behalf of these broker-dealers in NYSE-listed securities (Tape A) and in Amex-listed securities (Tape B).

The Program began in 1999.[7] Under the Program, NASD shares a portion of these tape revenues by providing a transaction credit to NASD members who exceed certain levels of OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also is an important tool for Nasdaq to compete against exchanges (particularly CSE and CHX) that offer similar programs[8] and thereby maintain market share in listed securities.

The Program works as follows. Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received by the NASD from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by CTA (Tape A) and the other representing 40% of the gross revenue received from CTA for reporting Amex trades (Tape B).

Eligibility for transaction credits is based on concurrent quarterly trading activity. For example, an InterMarket participant that enters the market for Tape A or Tape B securities during a particular quarter and prints an average of 500 daily trades of Tape A securities during the time it is in the market, or that averages 500 Tape B prints during such quarter, would be eligible to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The transaction credit can be applied to any and all charges imposed by NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

[6] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[7] *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). The NASD has subsequently extended the Program. *See* Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR–NASD–99–59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR–NASD–00–10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–00–32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR–NASD–00–72).

[8] *See* Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR–CHX–97–01) and Securities Exchange Act Release No. 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (SR–CSE–97–12).

receive transaction credits based on its trades during that quarter. Only those NASD members that continue to average a specified daily execution level are eligible for transaction credits and thus able to receive a pro-rata portion of the appropriate pool.[9] These thresholds permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the threshold and to provide an incentive to NASD members to actively trade in these securities.

The Program will expire on March 31, 2001. Because the Program has helped Nasdaq maintain market share in listed securities, Nasdaq proposes to extend the Program through the second quarter of 2001. Nasdaq's transaction credit program is being proposed on a pilot basis only. There can be no guarantee that transaction credits will be available to qualifying NASD members beyond the term of the pilot.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[10] in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. Nasdaq also believes the proposal is consistent with section 15A(b)(5) of the Act[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[9] As explained in Nasdaq's original pilot filing, the qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the InterMarket and competing for order flow. *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13).

[10] 15 U.S.C. 78–3(b)(6).

[11] 15 U.S.C. 78–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4 thereunder[13] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–01–15 and should be submitted by April 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–7894 Filed 3–29–01; 8:45 am]

BILLING CODE 8011–01–M

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 30, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: SBIC License Application.
No's: 415, 415A.
Frequency: On Occasion.
Description of Respondents: Small Business Investment Companies.
Annual Responses: 450.
Annual Burden: 14,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–7860 Filed 3–29–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9255]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) and its High Speed Craft and Rules of the Road Subcommittees will meet to discuss various issues relating to the safety of navigation. The meetings are open to the public.

DATES: NAVSAC will meet in plenary session on Tuesday, April 17, 2001, from 9:30 a.m. to 5 p.m., and on Thursday, April 19, 2001, from 8 a.m. 3 p.m. The High Speed Craft and Rules of the Road Subcommittees will meet on Wednesday, April 18, 2001, from 8 a.m. to 4 p.m. The meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 6, 2001. Requests to have material distributed to each member of the Council prior to the meeting should reach the Coast Guard on or before April 4, 2001.

ADDRESSES: NAVSAC will meet at The Westin Francis Marion Hotel, 387 King Street, Charleston, SC 29403. Send written material and requests to make oral presentations to Ms. Margie G. Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Executive Director of NAVSAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

Navigation Safety Advisory Council (NAVSAC). The agenda includes the following:

(1) Introduction and swearing-in of new members.
(2) Update on the Marine Transportation System (MTS) Initiative.
(3) Business Plan Development for NAVSAC 2001.
(4) Review of Process for Considering Human Element in Deliberations.
(5) Report of Ad Hoc Piracy Working Group.

High Speed Craft (HSC) Subcommittee. The agenda includes the following:

(1) Definition of HSC.
(2) High-speed recreational boats.
(3) Training and Manning of HSC.
(4) HSC from the Perspective of Slower Vessels that Encounter Them.

Rules of the Road Subcommittee. The agenda includes the following:

(1) Responsibility of Vessels ''Under Oars''.
(2) Lighting Requirements for Moored Barges and Barges Underway.

You may request a copy of the agenda from Ms. Hegy at the number listed in **FOR FURTHER INFORMATION CONTACT.**

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation, please notify the Executive Director no later than April 6, 2001. Written material for distribution at a meeting should reach the Coast Guard no later than April 6, 2001. If you would like a copy of your material distributed to each member of the Council in advance of the meeting, please submit 25 copies to the Executive Director no later than April 4, 2001.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 23, 2001.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–7950 Filed 3–27–01; 3:30 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 19, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh, Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 27, 2001.

Gary A. Michel,

Acting, Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–8454.
Petitioner: United Air Lines, Inc. Association.
Section of 14 CFR Affected:. 14 CFR 121.434 (c)(1)(ii).
Description of Relief Sought: Currently, UAL is permitted under Exemption No. 6570, as amended, substitute a qualified and authorized check airman for an FAA inspector when an inspector is not available to accomplish the required observation during the scheduled operating experience flight legs of a qualifying pilot in command (PIC) who is completing initial or upgrade training. Under Condition No. 7 of this exemption, UAL must not conduct a required observation prior to the flight leg during which the qualifying PIC will complete the minimum number of hours specified in §121.434(c)(3). UAL seeks to amend this condition to conduct an observation flight during the flight leg in

which the qualifying PIC is to complete at least 80% of the minimum number of hours specified in §121.434(c)(3).

Dispositions of Petitions

Docket No.: FAA–2000–8508.
Petitioner: Boeing Airplane Services.
Section of 14 CFR Affected: 14 CFR 25.783(h), 25.807(d)(1), 25.807(e)(1), 25.810(a)(1), 25.812(e), 25.813(b), 26.857(e), 25.1445(a)(2), and 25.1447(c)(1)
Description of Relief Sought/Disposition: To allow the carriage of up to three persons, in addition to two crewmembers, in the flight compartment of the Boeing Model 757–200 series airplane converted from passenger version to a Special Freighter under FAA Project ST2448WI–T.
Partial Grant, 03/22/2001, Exemption No. 7469

[FR Doc. 01–7939 Filed 3–27–01; 3:30 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8834

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 8834, Qualified Electric Vehicle Credit.

DATES: Written comments should be received on or before May 29, 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 Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Electric Vehicle Credit.
OMB Number: 1545–1374.
Form Number: 8834.
Abstract: Internal Revenue Code section 30 allows a 10% tax credit, not to exceed $4,000, for qualified electric vehicles placed in service after June 30, 1993. Form 8834 is used to compute the allowable credit. The IRS uses the information on the form to determine that the credit is allowable and has been properly computed.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Individuals or households and businesses or other for-profit organizations.
Estimated Number of Respondents: 500.
Estimated Time Per Respondent: 8 hours, 19 minutes.
Estimated Total Annual Burden Hours: 4,155.

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: March 26, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–7935 Filed 3–29–01; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Thursday, April 26, 2001.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, April 26, 2001 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555.

The public is invited to make oral comments from 8:30 p.m. to 9:20 p.m. on Thursday, April 26, 2001.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Maryclare Whitehead,

Executive, National Taxpayer Advocate.

[FR Doc. 01–7936 Filed 3–29–01; 8:45 am]
BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 66, No. 62

Friday, March 30, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN61-01-7286a; MN62-01-7287a; FRL6901-1]

Approval and Promulgation of Implementation Plans; Minnesota Designation of Areas for Air Quality Planning Purposes; Minnesota

Correction

In rule document 01–5850 beginning on page 14087 in the issue of Friday, March 9, 2001, make the following corrections:

§52.1220 [Corrected]

1. On page 14091, in §52.1220(c)(56)(1)(A), in the third column, in the fifth line, ''Utilities–Lake Plant'' should read ''Utilities–Silver Lake Plant''.

2. On the same page, in the same column, in §52.1220(c)(56)(i)(F), in the second line, ''Permit No. 1183–83–OT–1'' should read ''Permit No. 1148–83–OT–1''.

[FR Doc. C1–5850 Filed 3–29–01; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Radioactive Waste

Correction

In notice document 01–6813 appearing on page 15772 in the issue of Tuesday, March 20, 2001, make the following corrections:

1. In the table, in the third column, under the heading ''Total qty'', in the second line, ''500.9'' should read ''50.0''.

2. In the same table, in the fourth column, under the heading ''End use'', in the second paragraph, in the first line, ''Extended''should read ''Extend''.

3. In the same table, in the fifth column, the heading ''Country or designation'', should read, ''Country of designation''.

[FR Doc. C1–6813 Filed 3–29–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-00-221]

RIN 2115-AA97

Safety Zone: New York Harbor, Western Long Island Sound, East River, and Hudson River Fireworks

Correction

In rule document 01–7077 beginning on page 15997 in the issue of Thursday, March 22, 2001 make the following correction:

§165.168 [Corrected]

On page 16000, in §165.168(b), in the second column, in the fourth line, add five asterisks ''(*****)'' at the end of the sentence.

[FR Doc. C1–7077 Filed 3–29–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8940]

RIN 1545–AY73

Purchase Price Allocations in Deemed Actual Asset Acquisitions

Correction

In rule document 01–981 beginning on page 9925 in the issue of Tuesday, February 13, 2001 make the following corrections:

PARTS 1 and 602 [Corrected]

1. On page 9929, in the third column, in the authority citation, in the fourth line, ''1502.,''should read ''1502.''

2. On the same page, in the table, in the third column, under the heading ''Add'', in the ninth line, remove the word ''sentence''.

3. On the same page, in the same table, in the same column, in the twelfth line, remove the word ''sentence''.

§1.338–4 [Corrected]

4. On page 9939, in the second column, in the beginning of the second paragraph, the equation

$ADSP = G + L + T_R$ '' $(ADSP - B)$

should read

$ADSP = G + L + T_R \times (ADSP - B)$.

[FR Doc. C1–981 Filed 3–29–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
March 30, 2001

Part II

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls (PCB's); Return of PCB Waste from U.S. Territories Outside the Customs Territory of the United States; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS–66020A; FRL–6764–9]

Polychlorinated Biphenyls (PCB's); Return of PCB Waste from U.S. Territories Outside the Customs Territory of the United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is amending its rules in order to clarify that PCB waste in U.S. territories and possessions outside the customs territory of the United States may be moved to the customs territory of the United States for proper disposal. This rule interprets the prohibition on the manufacture of PCBs at Section 6(e) of the Toxic Substances Control Act (TSCA) to allow the movement of most PCB waste among any States of the United States for the purpose of disposal because such movement is not considered ''import'' for purposes of the definition of ''manufacture'' as that term is used in TSCA section 6(e)(3). This interpretation will allow U.S. territories and possessions which fall outside of the definition of ''customs territory of the United States'' to dispose of their PCB waste in the mainland of the United States where facilities are available that can properly dispose of PCB waste. Thus, this rule would ensure that a safe and viable mechanism exists for the protection of health and the environment for those citizens in areas of the United States where facilities are not available for the proper management and disposal of PCB waste. Because disposal of these wastes may occur only at approved facilities, no unreasonable risks to health or the environment on the mainland United States should be created by this rule.

DATES: This rule shall become effective April 30, 2001. This rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on April 13, 2001 (see 40 CFR 23.5, 59 FR 7271).

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: 202–554–1404; e-mail address:*TSCA-Hotline@epa.gov.*

For technical information contact: Peggy Reynolds, OPPT/NPCD, 7404, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–260–3965; fax number: 202–260–1724; e-mail address: *reynolds.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are in a U.S. territory or possession outside of the customs territory of the United States, and you manufacture, process, distribute in commerce, use, or dispose of PCBs. Examples of such territories and possessions are Guam, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and the U.S. Virgin Islands. Potentially affected entities may include, but are not limited to:

Types of entities	NAICS codes	Examples of potentially affected entities
Crude Petroleum and Natural Gas Extraction	211111	Facilities that own electrical equipment containing PCBs
Electric Power Generation; Transmission and Distribution	2211	Facilities that own electrical equipment containing PCBs
Food Manufacturing	311	Facilities that own electrical equipment containing PCBs
Petroleum and Coal Products Manufacturing	324	Facilities that own electrical equipment containing PCBs
Chemical Manufacturing	325	Facilities that own electrical equipment containing PCBs
Primary Metal Manufacturing	331	Facilities that own electrical equipment containing PCBs
Waste Treatment and Disposal	5622	Facilities that own electrical equipment containing PCBs. Entities that process and distribute PCB waste
Materials Recovery Facilities	56292	Facilities that own electrical equipment containing PCBs. Entities that process and distribute PCB waste
Public Administration	92	Agencies that own electrical equipment containing PCBs

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

Information about the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and OPPTS related programs is available from *http://www.epa.gov/internet/oppts/*. If you want additional information about EPA's PCB regulations at 40 CFR part 761, go to *http://www.epa.gov/pcb*.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–66020A. 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, Northeast Mall, Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Background

A. What Action is the Agency Taking?

EPA is amending the disposal regulations at 40 CFR 761.99 to allow certain PCB waste located anywhere in the United States, including the territories and possessions of the United States that are not inside the customs territory of the United States (hereafter ''territories and possessions''), to be moved to any area within the United States for disposal. For purposes of the ban on manufacturing PCBs under TSCA section 6(e)(3), this rule clarifies that such movement is not considered ''import.''

B. What is the Agency's Authority for Taking this Action?

EPA is taking this action to clarify its interpretation of the TSCA provisions relating to the manufacture of PCBs as an exercise of the Agency's inherent authority to issue regulations interpreting the statutes it administers. As a result, the Agency has not made a formal finding of ''no unreasonable risk'' for this regulation as would be required for a regulation that is issued under section 6(e) of TSCA. This regulation codifies EPA's interpretation of an undefined term, ''import,'' in the definition of ''manufacture'' under section 3(7) of TSCA, for purposes of section 6(e)(3) of TSCA. EPA's definition of the term ''import'' for all other purposes under TSCA is not affected.

C. Why is the Agency Taking This Action?

Under section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), and implementing regulations at 40 CFR part 761, the manufacture, processing, and distribution in commerce of PCBs are banned unless EPA issues a regulatory exemption to the ban. The ban on manufacture of PCBs was designed to prevent the creation or introduction to the United States of new PCBs, and it has been largely successful. Use of PCBs is banned except in a totally enclosed manner or as authorized by rule based on a finding that the use will not pose an unreasonable risk to human health or the environment. Disposal of PCBs is strictly controlled to minimize release to the environment. By enacting TSCA section 6(e), Congress established a presumption that PCBs pose an unreasonable risk of injury to health and the environment. *See, Central and Southwest Services, et al.* v. *EPA*, 220 F.3d 683, 688 (5th Cir. 2000).

Before the statutory ban was enacted in 1976, PCBs were widely used in industrial applications, particularly as insulating fluids in electrical equipment. Utilities and other industries lawfully manufactured, sold, and used items such as PCB electrical equipment and hydraulic or heat transfer equipment. After TSCA's general bans on manufacture, processing, distribution in commerce, and use of such items went into effect, EPA authorized the continued use of much of this equipment subject to conditions that protect against an unreasonable risk to health or the environment from the PCBs in the equipment. As these items reach the end of their useful lives, the owners are responsible for disposing of them following the stringent requirements of 40 CFR part 761. Any PCBs that are released from the equipment also must be disposed of following these requirements.

PCBs and PCB waste in the territories and possessions pose an especially great environmental threat. The territories and possessions have no permitted commercial PCB disposal facilities, so PCB waste is accumulated in long-term storage. Many of the territories and possessions are subject to frequent typhoons and earthquakes, which can severely damage storage areas and other buildings. PCBs and PCB waste in storage in these areas, therefore, may present a significantly greater risk to human health and the environment than PCBs stored in the mainland United States (Ref. 8). Because most of the population of the territories and possessions tend to be made up of minority or low-income communities, these risks present important environmental justice concerns. EPA has a strong commitment to ensuring the protection of these communities by mitigating their risk of exposure to PCBs to the greatest extent possible under the law.

For the reasons mentioned above and as discussed more fully in the preamble to the proposed rule (65 FR 65656–65658), EPA proposed to amend its regulations to allow the movement of PCB waste for disposal among any States of the United States, as defined in TSCA sections 3(13) and 3(14). This movement would be allowed regardless of whether the waste enters or leaves the customs territory of the United States, provided that the PCBs or the PCB waste were present in the United States on January 1, 1979, when the ban on manufacturing took effect, and have remained within the United States since then. EPA does not consider these movements to be imports subject to the ban on manufacturing under TSCA sections 3(7) and 6(e)(3).

III. Summary of the Final Action

In this action EPA is finalizing the rule as proposed.

A. What Comments Supported the Proposed Rule?

The Agency received 13 sets of comments from individuals in the environmental services and other U.S. industry, the U.S. Congress, and the Department of Defense, as well as representatives of some of the U.S. territories, and an environmental group. With one exception, all of the comments were in favor of the proposed action for the reasons that were cited in the preamble to the proposed rule (65 FR 65656–65658). In addition, many of the comments provide examples of situations in the U.S. territories which exist as a result of the previous interpretation of the statute. (The following discussions include a parenthetical reference to the docket number that was assigned by EPA to the comment.)

Several comments cited the burden that PCB waste cleanup activities create for inhabitants of U.S. territories that are not located within the customs territory of the United States. One commenter (C1–007) stated that millions of dollars are spent annually by the U.S. armed forces to clean up and remediate formerly used military dump sites which existed during World War II. PCBs and other contaminants (e.g., mustard gas and trichloroethylene (TCE)) that were buried on Guam are evident in the drinking water which comes from the island's sole source aquifer. In addition, efforts are currently underway to clean up PCBs from an old military power plant located in the village of Mong Mong, Guam, that have migrated into the Agana Swamp and adjacent farmed areas, which serve as a source of catfish, fruit and vegetables

that have been consumed by the village for many years. In describing the lack of disposal options that are available to inhabitants of Guam, the commenter cited unfair restrictions that allowed the U.S. Government to transport PCBs to Guam, but limits their return to the U.S. mainland for proper disposal.

In another set of comments (C1–009), the commenter related how PCB capacitors were sold to the U.S. military in Texas and were brought to the village of Tanapag in the Commonwealth of the Northern Mariana Islands, where the capacitors were abandoned about 40 years ago. Contaminated soil cleanup continues today. Efforts by the U.S. Army Corps of Engineers to dispose of PCBs onsite have resulted in the collection of contaminated soil in a single location within the village where the soil is exposed to rain and wind. According to the commenter, village residents have excess body loads of PCBs that have been verified by the Agency for Toxic Substances and Disease Registry (ATSDR), and EPA is currently conducting an evaluation of the degree of contamination of ground water and food sources used by the village. This commenter mentioned several difficulties that are associated with PCB contamination in U.S. territories. Specific difficulties include: a growing population and limited land which make it impossible to designate a location for hazardous waste disposal; there are no alternatives when the single source for water is contaminated; severe tropical storms, earthquakes or volcanic events, which are characteristic of the islands, increase the likelihood of the spread of PCB contamination; and subsistence economies are at risk by contamination and replacement sources of food may be unavailable or unaffordable. Although this commenter (C1–009) recognizes that the shipment of waste to the U.S. mainland is not without risk, he stated that leaving the waste in place is inconsistent with national goals of protecting human populations and the environment from exposure to PCBs.

A similar concern was repeated in another set of comments (C1–003) which stated that natural events can easily spread PCBs throughout the local environments to the detriment of ecosystems on which human, animal and plant life depend. Another commenter (C1–013) pointed out that U.S. territories rely on tourism for income, and as such, it is important to protect their ecosystems and natural resources. Since U.S. territories have sensitive ecosystems, limited natural resources and no TSCA facilities for proper treatment and disposal of PCB wastes, the commenter stated these areas face increased risk of costly, long-term PCB environmental and human health issues in the future. Another set of comments (C1–006) expressed support for the rule because there are no viable disposal options in the territories and the rule will require disposal to be conducted in strict compliance with the TSCA PCB regulations. This commenter believes it would be more protective to destroy wastes than to store the waste in areas of frequent hurricanes and earthquakes. Along those lines, another commenter (C1–007) believes it is in the interest of the island of Guam to ensure PCBs brought to Guam from the United States are returned to the United States for proper disposal. Still another commenter (C1–009) applauded EPA's efforts to correct the illogical distinction which currently exists and cited the disparity in EPA's 1984 policy which allowed U.S. manufactured PCBs to be returned to the United States as long as that waste remained under the control of the U.S. Government, but that same waste when found in U.S. territories could not be returned to the mainland for disposal. In this commenter's opinion, populations and environments located in U.S. territories were being treated with less care than those populations and environments that are outside the United States.

One commenter (C1–010) stated that the proposed rule properly recognizes that TSCA specifically defines territories or possessions of the United States, such as Guam, as ''States'' and reiterates that the term ''United States'' means all of the States (see Sec. 3(13) and 3(14)). Another commenter (C1–001) stated the previous interpretation prohibited U.S. territories from shipping PCB waste to approved disposal sites in compliance with applicable regulations and that the earlier interpretation has had an adverse effect on health and environment. These (C1–001, C1–003, C1–006, C1–007, C1–009, C1–010, C1–013) and other comments (C1–002, C1–008, C1–011) all support promulgating the rule as proposed.

B. What Comments Opposed the Proposed Rule?

1. *Legal authority*. In comments submitted during the comment period (C1–012) and in a follow-up letter (C1–014), a commenter argued that the rule violates TSCA section 6(e)(3), which bans the manufacture of PCBs unless EPA issues a regulatory exemption to the ban (C1–012). TSCA section 3(7) defines the term ''manufacture'' to include ''import into the customs territory of the United States.'' The commenter cited the decision in *Sierra Club* v. *EPA*, 118 F.3d 1324 (9th Cir. 1997), which held that, in banning manufacture of PCBs after January 1, 1979, Congress had also banned all import of PCBs after that date, because ''manufacture'' is defined to include import. The commenter viewed this rule as authorizing PCB waste to be imported into the customs territory of the United States, in violation of TSCA and the decision of the U.S. Court of Appeals for the Ninth Circuit.

First, the commenter argued that EPA may not ignore the statutory definition of ''manufacture,'' which includes ''import into the customs territory of the United States.'' This rule does not attempt to avoid the definition of ''manufacture.'' Instead, it clarifies what EPA will consider to be an ''import'' of PCBs into the customs territory of the United States for the purposes of that definition. While TSCA defines the term ''manufacture,'' it does not define the term ''import.'' The commenter believes that the phrase ''into the customs territory of the United States'' defines the word ''import,'' rather than modifies it. EPA disagrees with this interpretation. In this rule, EPA interprets the movement of certain PCB waste from areas within the United States but outside the customs territory of the United States to disposal facilities inside the customs territory of the United States not to be an ''import'' for purposes of TSCA section 6(e). EPA believes that ''import'' in this context applies to the initial introduction of particular PCBs into the United States (and the jurisdiction of TSCA), not the movement across the border of the customs territory of previously manufactured PCBs that have never left the regulatory jurisdiction of TSCA. For example, under TSCA, Guam is part of the United States, but it is outside the customs territory of the United States. Under this rule, it would not be an ''import'' of PCBs to transport PCB waste that was present in Guam on January 1, 1979, and has remained in Guam since that date, to an area inside the customs territory of the United States for disposal. Since this transport would not be an ''import,'' it would not be an act of ''manufacture'' which is banned under TSCA section 6(e)(3) and the Sierra Club decision. The definition of ''manufacture'' therefore is not a bar to the amendments in this rule.

Second, the commenter believed EPA ignored the definition of ''manufacture,'' which includes ''import into the *customs territory* of the United States [emphasis added]'' when it read sections 3(13) and 3(14) of TSCA as defining the ''United States'' to encompass territories and possessions of

the United States outside the customs territory of the United States. EPA disagrees with this comment. Under TSCA section 3(14), the term ''United States'' means ''all of the States.'' Under TSCA section 3(13), ''State'' means ''any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.'' Thus, the requirements of TSCA apply to PCBs in areas inside the customs territory of the United States (the 50 States, the District of Columbia, and Puerto Rico) as well as to areas outside the customs territory of the United States (the remaining territories and possessions). Persons who manage PCBs in areas outside the customs territory of the United States must manage and dispose of them in compliance with all of the regulations at 40 CFR part 761, yet they often lack adequate local storage and disposal facilities. As the commenter points out, in banning manufacture of PCBs, TSCA bans the import of PCBs into the customs territory. However, in this rule, EPA interprets the movement of certain PCB waste from areas within the United States (and therefore subject to TSCA) but outside the customs territory of the United States, to disposal facilities inside the customs territory of the United States not to be an ''import'' for purposes of the definition of ''manufacture'' as it applies to TSCA section 6(e) as long as the PCBs in the waste were present in the United States as the result of legal manufacture (i.e., manufacture prior to January 1, 1979) and have remained in the United States since that time. In doing so, EPA is not attempting to avoid that portion of the definition of ''manufacture'' that prohibits ''import into the customs territory of the United States.''

Third, the commenter argues that EPA cannot support this rule by reference to a long-standing policy that treats transboundary movement of certain PCB waste controlled by the U.S. Government as neither import nor export. In the preamble to the proposed rule, EPA compared the interpretation of the term ''import'' proposed at § 761.99(c) to its view of the terms ''import'' and ''export'' under that prior policy. The policy provides that PCBs purchased or procured in the United States by the Federal government, taken overseas for use in U.S. Government facilities, and that have remained under the control and jurisdiction of the U.S. Government, may be subsequently returned to the United States for disposal in an approved facility without violating TSCA's bans on import and export of PCBs. EPA did not refer to this policy as the basis for the proposed revisions to § 761.99(c). This rule is based on EPA's interpretation of the undefined statutory term ''import'' for purposes of the definition of ''manufacture'' as used in TSCA section 6(e)(3). Rather, EPA referred to that policy, as well as the other provisions of 40 CFR § 761.99, to illustrate the point that not every movement of PCBs across the border of the customs territory constitutes an ''import'' *per se* for purposes of TSCA section 6(e)(3).

Finally, the commenter pointed out that EPA did not propose to amend its regulatory definition of ''manufacture.'' That term is defined in 40 CFR 761.3 to mean ''to produce, manufacture, or import into the *customs territory* of the United States [emphasis added].'' The commenter pointed out that, under this definition, it is not unlawful to import PCBs from a foreign country into a territory or possession outside the customs territory of the United States. For example, PCB waste could still lawfully move from Japan to Guam. The commenter suggested EPA amend this definition by deleting the words ''customs territory of.'' This would bar import of PCBs into any territory or possession of the United States, and would effectuate EPA's stated goal that ''the prohibitions and restrictions of PCBs under TSCA section 6(e) and its implementing regulations protect not only U.S. citizens in the 50 States, but U.S. citizens in all the territories and possessions of the United States,'' (65 FR 65656). Moreover, the commenter opined that this change would prevent the territories and possessions from becoming a conduit of PCB waste from foreign countries to disposal facilities on the U.S. mainland.

This rule does not allow the territories and possessions to become a conduit to disposal facilities in the U.S. mainland for PCB waste generated in foreign countries. This rule allows PCBs that have been in the United States since January 1, 1979, including PCB waste in areas outside the customs territory of the United States, to be moved to the U.S. mainland for disposal. The rule does not apply to PCBs that arrived in the United States after that. The commenter is correct that, under the current definition of ''manufacture,'' it is not unlawful for foreign PCBs to enter territories and possessions outside the customs territory of the United States. However, the rule does not allow PCBs in the U.S. territories and possessions that entered those areas after January 1, 1979, to be transported to the U.S. mainland for disposal. The territories and possessions therefore cannot become a conduit of PCB waste from foreign countries to disposal facilities on the U.S. mainland.

EPA has not adopted the commenter's suggestion to amend the regulatory definition of ''manufacture.'' First, the regulatory definition of ''manufacture'' at 40 CFR 761.3 mirrors the statutory definition in TSCA section 3(7). Because the statutory definition would remain intact, amending the regulatory definition would not have the effect the commenter anticipates. In addition, the result the commenter seeks by the amendment is outside the scope of the proposed rule. The rule as proposed would not have prevented foreign PCBs from entering areas of the United States that are outside the customs territory, and was not intended to.

2. *Risks posed by transportation of PCB waste.* A commenter expressed concern about the risks to health and the environment of transporting PCB waste from the territories and possessions to the U.S. mainland for disposal (C1–012 and C1–014). The commenter cited U.S. Department of Transportation (DOT) data on highway incidents involving PCBs and other hazardous materials that resulted in death, injury, or property damage. The commenter also pointed out the risk of accidents during transoceanic shipments of PCB waste. The commenter suggested that disposal technology be transported to the waste, rather than transporting the waste to the disposal site. (See EPA's response to this comment in Unit III.B.3. below.)

PCBs (both liquid and solid) are subject to DOT regulations that apply to transport of hazardous materials. The Hazardous Materials Regulations (HMR), 49 CFR parts 171 through 180, apply to materials, or groups or classes of materials, that the Secretary of Transportation has determined may pose an unreasonable risk to health and safety or property when transported in commerce in a particular amount and form. The HMR are issued for the safe transportation of these materials in interstate, intrastate, and foreign commerce by aircraft, railcars, vessels, and any motor vehicles. The HMR address hazard communication, packaging requirements, operational rules, and training. These rules already apply to transoceanic shipment of PCBs between areas inside the customs territory but not in the mainland United States and disposal facilities on the mainland. EPA's intent for this rule is to put citizens in the territories and possessions in the same regulatory position as citizens in Hawaii or Puerto

Rico with respect to disposal of PCBs. To the extent the commenter has concerns about the adequacy of those other rules, such concerns are outside the scope of this rulemaking.

As the commenter points out, incidents involving transportation of PCBs and other hazardous materials do occur. Therefore, transporters of PCBs must be familiar with the HMR as they apply to PCBs, and are legally obligated to comply with those provisions as applicable. Compliance with the HMR is the best way to prevent transportation incidents to the greatest extent practicable. Additional information, including information on enforcement and training, is available at *http://hazmat.dot.gov/*.

The commenter was particularly concerned about a tanker spill of PCBs and the effect such a spill would have in biologically rich coastal waters, or near areas of high human population, croplands, water supplies, critical wildlife habitat, ports, or fisheries. Although a comprehensive inventory of the PCB waste in the territories and possessions is not available, information developed by EPA Region IX did not identify any appreciable quantities of liquid PCB waste that would be likely to be disposed of in U.S. mainland facilities. The PCB waste Region IX identified is made up of approximately 10,000 cubic yards of soil, 13 transformers (one estimated to contain up to 310 gallons of liquid PCBs), one 55–gallon drum of personal protective equipment, 800 fluorescent lamp ballasts packed in four 55–gallon drums, and 41 drums of sludge and soil from leaking transformers (Ref. 8). Therefore, EPA believes it is unlikely that any territory or possession would ever generate enough liquid PCB waste to fill a tanker ship bound for the mainland United States. As noted above, transporters of PCBs must be familiar with the HMR as they apply to PCBs, and are legally obligated to comply with those provisions as applicable.

3. *Risks posed by disposal of PCB waste*. The commenter also opposed the proposed rule on the ground that facilities that treat and dispose of PCBs have records of spills, environmental violations, and imposed penalties, and pose risks to health and the environment that are ''not negligible'' (C1–012 and C1–014). The commenter also noted that dioxin-like products of incomplete combustion can form from unburned PCBs released during incineration. These products of incomplete combustion can become widely dispersed in the environment and can bioaccumulate in the food chain. The commenter pointed out that innovative, alternative technologies are available as alternatives to incineration. The commenter suggested that these innovative, alternative technologies be used to treat the waste on-site in the territories and possessions, rather than sending the waste to the mainland United States for incineration.

PCB waste covered by this rule must be managed in accordance with the disposal regulations at 40 CFR part 761, which were promulgated under TSCA's no unreasonable risk standard. These regulations allow disposal of PCB waste in TSCA-approved incinerators (see § 761.70). As part of its approval process for PCB incinerators, EPA conducts a technical assessment of the facility's technology and procedures to ensure that operation of the facility will not present an unreasonable risk of injury to health or the environment. EPA's technical assessment establishes limits on the PCB concentration of the waste the facility may dispose of, and on the waste feedrate per hour, based on a demonstration test. The operating conditions of the approval are set so that they do not exceed the values established in the technical assessment. The approval also requires the facility to meet the regulatory standards set out in 40 CFR part 761, subpart D as to destruction and removal efficiency and PCB concentration of the facility's waste products.

However, thermal destruction is not the only disposal option available under EPA's regulations. Depending on the form of the waste and its PCB concentration, other disposal options include TSCA-approved landfills (see § 761.75), decontamination (§ 761.79), and disposal in certain landfills permitted in accordance with the Resource Conservation and Recovery Act (RCRA) (see § 761.61(a) and § 761.62(a) and (b)). In addition, the PCB regulations allow EPA Regional Administrators to grant risk-based approvals for alternative disposal and decontamination methods under § 761.60(e), § 761.61(c), § 761.62(c), and § 761.79(h). In 1994, the last year for which data have been compiled, 842,584,000 kilograms of PCB waste were disposed of in the United States using all technologies available at that time (Ref. 22).

EPA supports the commenter's suggestion that generators and disposers of PCB waste now located in the territories and possessions examine innovative, alternative disposal technologies. Some of these technologies are commercially available and may offer further risk reductions over mainland disposal in an incinerator or TSCA landfill. EPA recently released a report reviewing several of these alternative technologies, ''Potential Applicability of Assembled Chemical Weapons Assessment Technologies to RCRA Waste Streams and Contaminated Media,'' August 2000. This report is available from EPA's web site at *www.epa.gov/tio* or at *www.clu-in.org.*, or from EPA's National Service Center for Environmental Publications, (800) 490–9198. Information about these innovative, alternative technologies, including mobile technologies that can be taken to the locations where PCB wastes are stored, is also available to local government officials and members of the public through Regional PCB Coordinators. Anyone intending to dispose of PCBs using an alternative technology must confirm that it is consistent with EPA's regulations, and that a TSCA PCB disposal approval has been issued that is specific to the waste and technology that will be used.

EPA acknowledges that, because PCBs are toxic, there are risks associated with managing them that cannot be completely prevented. Accidents can occur during storage and disposal, as can lapses in compliance. This is true of conventional disposal technologies as well as of innovative, alternative technologies. EPA's PCB regulations and facility-specific approvals provide regulatory and enforcement structures for reducing the risks inherent in managing and disposing of PCBs. Moreover, it is long-standing EPA policy that the benefits of permanently removing PCBs from the environment through proper disposal outweigh the risks of the disposal processes themselves (see EPA's Import for Disposal Rule, 61 FR 11096, 11098 (March 18, 1996) (FRL–5354–8)). These benefits may be greater with regard to the territories and possessions, where facilities for proper management and disposal are more limited than on the U.S. mainland, and the risks of release to the environment are greater. As noted above, EPA's intent for this rule is to put citizens in the territories and possessions in the same regulatory position as citizens in Hawaii or Puerto Rico with respect to disposal of PCBs. To the extent the commenter has concerns about the adequacy of the PCB disposal regulations, such concerns are outside the scope of this rulemaking.

4. *Environmental justice concerns*. A commenter questioned EPA's conclusion in the preamble to the proposal that this rule presents no environmental justice concerns, and that it will reduce risks to health and the environment from PCBs (C1–012 and C1–014). The commenter believed

EPA had disregarded the environmental risks that low-income and minority communities in the territories may face due to transportation of PCB wastes. The commenter also believed EPA's conclusion ignored increased exposure to PCBs and attendant health risks that will be borne by low-income and minority communities surrounding the treatment and disposal facilities in the United States where the wastes will be sent.

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Communities* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. EPA finds that the amendments in this final rule will reduce the risk to human health and the environment from exposure to PCBs in low-income and minority communities in the U.S. territories and possessions located outside of the customs territory of the United States because it will allow PCB waste found there to be disposed of in EPA-approved facilities on the mainland of the United States.

Executive Order 12898 directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions. . .'' EPA's judgment at the time of the proposed rule was that the rule would benefit low-income and minority populations in the territories and possessions because it would allow PCB waste to be removed from those areas for permanent disposal. Comments from the territories and possessions support that judgment.

The Resident Representative to the United States from the Commonwealth of the Northern Mariana Islands supported the proposed rule (C1–009). The commenter noted the risks to residents of the village of Tanapag from soil contaminated by abandoned PCB capacitors. As discussed in Unit III.A., members of the village community have been verified by the ATSDR to have excess body loads of PCBs. EPA is currently evaluating the degree of contamination of ground water and food sources used by the village. An attempted remediation of the contaminated soil using thermal desorption has not been completed, and contaminated soils are stockpiled within the village, exposed to sun and rain. The commenter also noted the difficulty of managing hazardous waste on a small tropical island with limited land resources, a single source of drinking water, and frequent tropical storms, earthquakes, and volcanos. The commenter further observed that economic factors for the islands are problematic. The island may be exposed to a variety of toxic wastes due to global commerce, requiring a multitude of disposal technologies, but for a small quantity of each type of waste. Thus, economies of scale in establishing and operating disposal facilities are lacking. Furthermore, the subsistence economies on which some island people rely are put at risk by contamination, and replacement sources of food may be unavailable or unaffordable. The commenter concluded, ''Shipment of PCB wastes from the U.S. territories to the U.S. customs territory is not without risk; but the alternative of leaving the wastes where they are has proven to have results inconsistent with the goals of our national policy of protecting the environment and human populations from exposure to PCBs.'' EPA has issued an Order under RCRA to the Army Corps of Engineers to clean up the Tanapag Village contamination.

The Chairperson of the Committee on Natural Resources of the Senate of Guam also wrote in favor of the proposed rule (C1–007). The senator pointed out that Guam is a small island, prone to natural disasters such as typhoons and earthquakes. The senator also noted that the island's growing population and limited land area will make it difficult if not impossible to designate any part of the island for hazardous waste disposal. The population of Guam is becoming more concerned about the health and environmental effects PCBs may have on the people and the island. A current case on Guam involves PCBs that leaked into the largest wetland on Guam from a Navy power plant. The Navy is currently assessing the effect PCBs may have on the aquatic life in the wetland, such as catfish, and the fruits and vegetables that have been farmed in the area and consumed by island residents for many years. A number of residents in the local village are concerned that adverse health effects such as cancer may have occurred because of living next to the power plant or consuming food that was produced in the area. The senator concluded:

To insure the health and welfare of our island residents, it is in the interest of the island to insure that toxins such as PCBs that have been brought into Guam from U.S. destinations be returned for proper disposal. The U.S. territories, such as Guam, should not be unfairly burdened by restrictions that allowed for the transportation of such a toxin from the United States to Guam, but limits the return to the U.S. mainland from Guam for proper disposal. Our islands and our limited land resources and extenuating environmental conditions should be given fair consideration in addressing USEPA's proposed rule for proper disposal facilities in the U.S. mainland.

The Administrator of the Guam Environmental Protection Agency commented that PCBs from several cleanups are in indefinite storage on Guam (C1–008). These storage areas are subject to damage by frequent typhoons and earthquakes. PCBs that are released can present an exposure risk to Guam residents through consumption of contaminated fish, which is a subsistence food for Guam residents. Even a small amount seeping into the groundwater could eliminate Guam's sole aquifer as a source of drinking water. The commenter stated that the proposed rule would remove a tremendous burden on Guam and ensure that a safe and viable mechanism existed for the protection of health and the environment for residents on Guam where disposal facilities are not available.

A Member of Congress from Guam supported the proposed rule, commenting that it would help to eliminate the threat to the health and welfare of Guam and other U.S. territories communities from PCB waste (C1–002). A Member of Congress from American Samoa commented that the proposed rule was a common sense solution to the problem of storage of PCBs in the territories, noting that hurricanes, typhoons, and earthquakes in the territories can spread PCBs throughout the local environments on which humans, animals, and plant life depend (C1–003).

Finally, a long-term resident of Guam who is also an environmental professional engaged in environmental consulting services on Guam and in the Commonwealth of the Northern Mariana Islands supported the proposed rule and commented that EPA's prior policy of prohibiting PCBs in the territories and possessions from being shipped to an EPA-approved disposal site was not protective of health and the environment (C1–001).

EPA believes that the interpretation in this final rule will result in reduced risk to health and the environment from exposure to PCBs in low-income and minority communities in the U.S. territories and possessions. This rule will allow most PCB waste found in those territories and possessions to be disposed of in EPA-approved facilities on the mainland of the United States.

While the rule could result in some short-term risk from transportation of the waste, EPA believes that that risk is outweighed by the elimination of the health and environmental concerns in the U.S. territories and possessions over the long term that would be posed by continued storage of the waste.

The commenter also asserted that the rule would adversely affect low-income and minority populations who live near the disposal facilities in the United States where the waste would be disposed of by incineration (C1–012). As part of its approval process for PCB incinerators, EPA conducts a technical assessment of the facility's technology and procedures to ensure that operation of the facility will not present an unreasonable risk of injury to health or the environment. EPA's technical assessment establishes limits on the PCB concentration of the waste the facility may dispose of, and on the waste feedrate per hour, based on a demonstration test. The operating conditions of the approval are set so that they do not exceed the values established in the technical assessment. The approval also requires the facility to meet the regulatory standards set out in 40 CFR part 761, subpart D as to destruction and removal efficiency and PCB concentration of the facility's waste products. EPA conducts a similar analysis when permitting other types of PCB disposal facilities, as well, and determines that activities at the facility will not pose an unreasonable risk of injury to health or the environment. Additionally, the approval process for PCB disposal facilities is subject to E.O. 12898. Therefore, EPA is also required to consider the potential impacts of that action on the environmental and health conditions in low-income and minority communities whenever a permit is approved.

Therefore, as long as PCB waste from the U.S. territories and possessions is disposed of in accordance with a facility's approval, disposal of the waste will not produce risks greater than those calculated at the time the PCB disposal approval was issued, which EPA determined will not pose an unreasonable risk to the surrounding community. Disposal facilities permitted under TSCA must renew their permits periodically. The permit renewal process is open to public participation. Issues on siting of facilities, including environmental justice issues, can be raised as part of that process, and will be considered by EPA. As noted above, EPA's intent for this rule is to put citizens in the territories and possessions in the same regulatory position as citizens in Hawaii or Puerto Rico with respect to disposal of PCBs. To the extent the commenter has concerns about the adequacy of EPA's approval of specific PCB disposal facilities under TSCA, such concerns are outside the scope of this rulemaking, and can be addressed in the renewal process for those facilitlies' permits.

5. *Non-cancer health effects of PCBs*. A commenter questioned the basis for the statement in the preamble to the proposed rule that ''PCBs cause significant ecological and human health effects, including cancer, neurotoxicity, reproductive and developmental toxicity, immune system suppression, liver damage, skin irritation, and endocrine disruption'' (C1–011) (see 65 FR 65655, November 1, 2000)(FRL–6750–6). The commenter noted that the only reference for the statement was a report by EPA's Office of Research and Development, ''PCB Cancer Dose-Response Assessment and Application to Environmental Mixtures'' (Ref. 1). The commenter pointed out that that report addressed the carcinogenicity of PCBs, not their non-cancer or ecological effects, and that EPA's Office of Research and Development is in the process of reassessing the non-cancer effects of PCBs. The commenter referred to a literature review it has conducted on non-cancer effects of PCBs, which was submitted for the Agency's consideration as part of EPA's reassessment of the effects of dioxin and related compounds (including co-planar PCBs) (see 65 FR 59186, October 4, 2000) (FRL–6880–9). The literature review concludes that, except for certain oculodermal effects, PCBs do not contribute to adverse health effects in humans.

EPA appreciates the commenter's contribution to the ongoing efforts elsewhere in the Agency to assess the health effects of PCBs. However, the preamble statement the commenter questions was included for background only, as this rule is not based on an assessment of the risks of PCBs. This rule clarifies EPA's interpretation of the TSCA provisions relating to the manufacture of PCBs as an exercise of the Agency's inherent authority to issue regulations interpreting the statutes it administers. As a result, the Agency has not made a formal finding of ''no unreasonable risk'' for this regulation as would be required for a regulation that is issued under section 6(e) of TSCA. This regulation codifies EPA's interpretation of an undefined term, ''import,'' in the definition of ''manufacture'' under section 3(7) of TSCA, for purposes of section 6(e)(3) of TSCA. All PCB wastes affected by this rule are subject to the current regulations at 40 CFR part 761, which were promulgated based on the standard of no unreasonable risk.

C. What Other Comments Were Received on the Proposed Rule?

The Agency also received comments that raised additional issues.

1. *Broaden the scope of the rule*. EPA received a request (C1–004) to broaden the scope of the proposed rule to include both domestic- and foreign-manufactured PCBs that have remained under the control of the U.S. Government. The Agency was also asked to consider submitted comments (C1–005) as a petition for an exemption from the TSCA prohibitions to allow the import for disposal of U.S.-manufactured PCBs that are located within the Western Hemisphere. (An exemption petition requires Agency action in the form of a separate rulemaking.) EPA cannot act favorably on either of these requests since they clearly fall outside of the scope of the proposed rule.

The proposal was issued as an interpretive rule rather than a TSCA section 6(e) action; therefore, a formal finding of ''no unreasonable risk'' is not necessary. The legal basis for the proposed interpretive rule was that PCBs which were legally present anywhere in the United States when the ban took effect in 1979 should not be considered ''imported'' when they are moved to another place in the United States, regardless of whether the PCBs leave or enter the customs territory of the United States. EPA believes that ''import'' in this context applies to the initial introduction of particular PCBs into the United States (and the jurisdiction of TSCA), not to the movement across the border of the customs territory of previously manufactured PCBs that have never left the regulatory jurisdiction of TSCA. Therefore, foreign-manufactured PCBs and U.S.-manufactured PCBs that have been exported do not fit within the narrowly crafted interpretation of the proposed rule. An exemption remains a viable alternative for seeking Agency approval to import for disposal either foreign-made PCBs or domestic-made PCBs that have been exported from the United States. The appropriate means of obtaining a response from the Agency on those requests is to submit an exemption petition pursuant to section 6(e)(3) of TSCA, following the procedures at 40 CFR 750.10. Exemptions may be granted for a period not to exceed 1 year, but only after the petitioner has demonstrated that the two statutory requirements have been met (i.e., there will be no unreasonable risk

of injury associated with the requested activity, and that good-faith efforts have been made to find a substitute for the PCBs). Neither set of comments provided the level of detailed information that is necessary for the Administrator to act on a request for an exemption from the TSCA prohibitions.

2. *Treatment of post-January 1, 1979 wastes.* EPA also received two inquiries regarding the applicability of the interpretive rule to post–1979 PCB wastes. One set of comments (C1–008) raised a concern that the proposed rule would not allow PCB wastes which arrived in U.S. territories after January 1, 1979, to be disposed of on the U.S. mainland. Another commenter (C1–011) expressed a similar opinion and indicated there may be difficulty in demonstrating that PCBs were present in a U.S. territory or possession prior to January 1, 1979. The suggested solution was to allow importation for disposal of PCBs present in a territory or possession on the ''effective date of the proposed rule.''

These commenters apparently misunderstood the proposed rule. As discussed in the preamble to the proposed rule, in order to qualify for this regulation, the PCBs in the waste in question must have been present in the United States prior to 1979, not present in the territory or possession where they are now prior to that date (65 FR 65657). So long as the PCBs were lawfully manufactured in or imported into the United States prior to 1979, and never left the United States, the date on which they entered the territory or possession in question is irrelevant.

Wastes that are covered by this rule may be sent to the U.S. mainland for disposal in accordance with the PCB disposal regulations. Any other PCB waste may not be imported to the U.S. mainland for disposal, unless an exemption under section 6(e)(3) of TSCA has been obtained. Similarly, foreign PCB waste in a U.S. territory or possession may be exported to another country for disposal only when the TSCA exemption requirements, and all requirements of any relevant international agreement, have been satisfied.

With respect to changing the date on which PCBs must have been in the United States in order to qualify for this regulation, EPA does not agree that using the date of the proposed rule would be appropriate. Part of the basis for this interpretive rule is that PCBs that are present in the United States when the ban on manufacturing went into effect and have remained in the United States since then should be managed in the same manner regardless of whether they are now present in a territory or possession, rather than within the customs territory of the United States. Therefore, using a threshold date other than January 1, 1979, would not be supported by the rationale for the proposed rule.

D. What Does this Final Rule Do?

As noted above, the territories and possessions are subject to all of TSCA's requirements. EPA is charged with implementing section 6(e) to protect the health and environment of *all* U.S. citizens, including the residents of the territories and possessions. To interpret the statute as prohibiting the movement of PCB waste from the territories and possessions to disposal facilities in the U.S. mainland puts the residents of the territories and possessions at a serious disadvantage compared to residents of areas that fall within the definition of the customs territory. Because there are no EPA-approved commercial PCB storage or disposal facilities outside the customs territory, and because of the unique environmental conditions in the territories and possessions, the U.S. citizens of these areas are subject to a higher likelihood of exposure to PCBs, and thus potential for a higher risk of injury.

EPA has determined that its previous interpretation of the definition of ''manufacture'' is not mandated by the language of TSCA, results in inequitable treatment among different areas within the United States, does not adequately protect health and the environment throughout the United States, and therefore is not in the public interest. EPA believes that use of the term ''import '' in the definition of ''manufacture'' was not intended to include the movement of PCB waste that has never been outside the United States or outside the regulatory control of TSCA (after enactment) from one area of the United States (the territories and possessions) to another area of the United States (the mainland) for disposal. There is an obvious distinction between that type of movement and the introduction of a chemical substance into the customs territory of the United States from a foreign country. This latter category results in the introduction of a substance in the United States that was not there before, and is much more analogous to the manufacture of a new chemical substance in the United States. Therefore, EPA is interpreting the movement of certain PCB waste from the territories and possessions into the customs territory of the United States for disposal not to be a ''manufacture'' subject to the ban set forth in TSCA section 6(e).

This interpretive rule allows the movement of PCB waste for disposal among any States of the United States, as defined in TSCA sections 3(13) and 3(14), regardless of whether the waste enters or leaves the customs territory of the United States, provided that the PCBs in the waste were present in the United States on January 1, 1979, when the ban on manufacturing took effect, and has remained within the United States since that time. This rule will allow PCB waste that was present in the territories and possessions at the time TSCA's ban on manufacturing took effect, and that remained within the territories and possessions since that date, to be stored and disposed of in any facility in the United States that meets the requirements of 40 CFR part 761, subpart D. It also allows PCBs that were present in the territories and possessions at the time TSCA's bans took effect, but were not designated as waste until after that date, to be stored and disposed of in any subpart D facility in the United States, as long as the PCBs and PCB waste had remained in the United States. Finally, this interpretive rule allows PCBs or PCB wastes that were transferred from an area in the United States that is outside the territories and possessions, but that was moved to a territory or possession after January 1, 1979, and that has never left the United States, to be stored and disposed of in any subpart D facility in the United States. EPA does not consider movement of any of these wastes to the customs territory of the United States to be ''manufacture'' as that term is defined in TSCA and therefore does not consider it subject to the ban on manufacturing under TSCA section 6(e).

This final rule applies to PCB waste in the territories and possessions provided that the PCBs in the waste are there as the result of conduct that was legal at the time it occurred (for example, PCB materials that were brought to the territories before TSCA's ban on distribution in commerce became effective), and have been subject to regulation under TSCA since that time. This would include PCB equipment that was lawfully in use in one of the States, that was transferred to a territory or possession for continued lawful use, and that reached the end of its useful life and became subject to disposal while in the territory or possession.

This final rule does not allow disposal in the United States of PCBs transported to the territories and possessions from foreign countries after the effective date of the ban on manufacture in TSCA section 6(e)(3). The purpose of this rule

is to ensure that all U.S. PCB waste can be disposed of in compliance with the requirements of TSCA section 6(e) and its implementing regulations. This final rule does not allow the territories and possessions to become a conduit to the United States for PCB waste generated in other countries.

Finally, EPA has not made a formal finding of ''no unreasonable risk'' for this regulation. This regulation is not being promulgated under TSCA section 6(e), but rather as an exercise of EPA's inherent authority to interpret the statutes it administers.

VIII. References and Documents in the Record

As indicated in Unit I.B.2., the official record for this rulemaking has been established under docket control number OPPTS–66020A, the public version of which is available for inspection as specified in Unit I.B.2. The following is a listing of the documents that have already been placed in the official record for this rulemaking:

A. Federal Register Notices

1. U.S. Environmental Protection Agency (USEPA). 44 FR 31514, May 31, 1979, ''Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Final Rule.''

2. USEPA. 45 FR 29115, May 1, 1980, ''Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal: Notice.'' OPTS 62008.

3. USEPA. 59 FR 62788, December 6, 1994, ''Disposal of Polychorinated Biphenyls: Proposed Rule.'' OPPTS–66009A.

4. USEPA. 61 FR 11096, March 18, 1996, ''Disposal of Polychlorinated Biphenyls; Import for Disposal: Final Rule.'' OPPTS–66009B.

5. USEPA. 63 FR 35384, June 29, 1998, ''Disposal of Polychlorinated Biphenyls (PCBs): Final Rule.'' OPPTS–66009C.

B. Reference Documents

1. USEPA, Office of Research and Development (ORD). PCBs Cancer Dose-Response Assessment and Application to Environmental Mixtures. EPA600P–96001F (September 1996): 75pp. OPPTS–66009C.

2. USEPA, Office of Air Quality Planning and Standards (OAQPS). Deposition of Air Pollutants to the Great Waters, First Report to Congress. EPA–453R–93–055 (May 1994): 136pp. OPPTS–66009B.

3. USEPA, OAQPS. Identification of Sources Contributing to the Contamination of the Great Waters by Toxic Compounds. EPA–453R–94–087 (March 17, 1993): 145pp. OPPTS–66009B.

4. USEPA, OAQPS. Relative Atmospheric Loadings of Toxic Contaminants and Nitrogen to the Great Waters. EPA–453R–94–086 (March 15, 1993): 142pp. OPPTS–66009B.

5. USEPA. Chapter 2.2, Exposure and Effects of Airborne Contamination for the Great Waters Program Report. EPA–453R–94–085 (December 22, 1992): 201pp. OPPTS–66009B.

6. USEPA, Office of Prevention, Pesticides, and Toxic Substances (OPPTS). Commercially Permitted PCB Disposal Companies (April 2000): 3pp.

7. USEPA, Office of Pollution Prevention and Toxics (OPPT). Excerpt from the PCB Waste Handler Database; Facility Information for U.S. Territories and Possessions (September 27, 2000): 12pp.

8. USEPA, Region IX. Memo from Lily Lee, Guam Program Manager, to Enrique Manzanilla, Director, Cross Media Division, Re: Summary of PCB Waste Quantities and Concentrations in the U.S. Territories (July 19, 2000): 5pp.

9. Unitek Environmental-Guam. Letter from LeRoy Moore, President, to John Malone [sic], Director, National Program Chemicals Division, Re: PCB Shipments from Guam and Possessions of the United States for Disposal in the Mainland United States (May 11, 2000): 2pp.

10. USEPA, OPPT. Note from Peter Gimlin to the File, Re: Unitek Environmental-Guam (UEG) Meeting (September 27, 2000): 1p.

11. U.S. Congress. Letter from Robert A. Underwood, House of Representatives, to Carol M. Browner, Administrator, EPA, Re: Disposal of Polychlorinated Biphenyls (PCBs) from Guam and the Other U.S. Territories (April 12, 2000): 2pp.

12. USEPA, Region IX. Letter from Felicia Marcus, Regional Administrator, to Robert A. Underwood, U.S. House of Representatives, Re: Disposal of Polychlorinated Biphenyl Waste (February 4, 2000): 2pp.

13. USEPA, OPPT. Memo from John W. Melone, Director, Chemical Management Division, to George Abel, Chief, Pesticides and Toxic Substances Branch, USEPA Region X, Re: Transit of PCB Waste Generated in the United States Through a Foreign Country (January 19, 1995): 2pp.

14. USEPA, OPPT. Letter from John W. Melone, Director, Chemical Management Division, to Arthur J. Brown, National Science Foundation, Re: Request to Return PCBs in Antarctica to the United States for Disposal (March 11, 1994): 3pp.

15. USEPA, OCM and OE. Letter from Michael F. Wood, Director, Compliance Division, and Michael J. Walker, Enforcement Counsel for the Toxics Litigation Division, to Marion P. Herrington, General Electric Company, Re: Transfer of PCB Waste Generated in A U.S. Territory to An Approved Disposal Facility in the Continental United States (August 14, 1992): 2pp.

16. USEPA, Office of Toxic Substances (OTS). Letter from Don R. Clay, Director to Colonel Joseph T. Cuccaro, Defense Logistics Agency, Re: USEPA Position on DOD Owned PCB Fluid Located Abroad and Returned to the U.S. for Disposal (February 7, 1984): 3pp.

17. United Nations Environment Programme (UNEP). Inventory of World-wide PCB Destruction Capacity, First Issue (December 1998): 85pp.

18. U.S. Congress. Congressional Record from the House of Representatives, H8598, Guam's Environmental Problems (October 2, 2000): 1p.

19. U.S. Congress. Letter from Robert A. Underwood, House of Representatives, to Carol Browner, Administrator, EPA, Re: Inability of Guam to Import PCBs into the U.S. Mainland for Proper Disposal (December 10, 1999): 2 pp.

20. USEPA, OPPTS. Letter from Susan H. Wayland, Acting Assistant Administrator, to Robert A. Underwood, U.S. House of Representatives, Re: Disposal of PCB Waste in Guam (June 14, 2000): 2 pp.

21. USEPA, OPPTS. Letter from Susan H. Wayland, Acting Assistant Administrator, to Robert A. Underwood, U.S. House of Representatives, Re: Meeting on PCB Waste in Guam (September 29, 2000): 2 pp.

22. USEPA, OPPT. PCB Disposal and Storage Statistics, 1990–1994 (May 10, 1996): 11 pp.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this action is not a ''significant regulatory action'' subject to review by OMB, because this action is not likely to result in a rule that meets any of the criteria for a ''significant regulatory action'' provided in section 3(f) of the Executive Order. This final rule simply clarifies EPA's interpretation of the TSCA section 6(e) provisions relating to the manufacture of PCBs.

B. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq., the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this action is not expected to result in any direct adverse impact for small entities. This rule interprets the prohibition on the ''manufacture of PCBs'' in a manner which affords U.S. citizens (including small entities) residing in U.S. territories and possessions located outside the ''customs territory of the United States'' an opportunity to dispose of PCB waste when facilities that require EPA approval to manage PCB waste are not readily available. This rule is being promulgated in the public interest to ensure equitable treatment among different areas within the United States and adequate protection of health and the environment throughout the United

States. This rule provides a mechanism for the disposal of PCB waste resulting from natural disasters (e.g., tropical storms, cyclones, typhoons and hurricanes), former use of U.S. territories and possessions for defense purposes, spills of PCBs and the expiration of PCB equipment that has reached the end of its natural life span.

C. Paperwork Reduction Act (PRA)

This regulatory action does not contain any information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments, in the aggregate, or on the private sector in any one year. The UMRA requirements in sections 202, 204, and 205 do not apply to this rule, because this action does not contain any ''Federal mandates'' or impose any ''enforceable duty'' as defined by UMRA on State, Tribal, or local governments or on the private sector. The requirements in section 203 do not apply because this rule does not contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications, because it 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. This action interprets the TSCA prohibition on the manufacture of PCBs in a manner which allows PCB waste in U.S. territories and possessions located outside of the customs territory of the United States to be disposed of in EPA-approved facilities on the mainland of the United States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13084 and 13175

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on such communities. It interprets the TSCA prohibition on the manufacture of PCBs in a manner which allows PCB waste in U.S. territories and possessions located outside of the customs territory of the United States to be disposed of in EPA-approved facilities on the mainland of the United States. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

On November 6, 2000, the President issued Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249). Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 as of that date. EPA developed this rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084.

G. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. EPA finds that the interpretation in this final rule will reduce the risk to human health and the environment from exposure to PCBs in low-income and minority communities in the territories and possessions. This rule allows PCB waste found in U.S. territories and possessions located outside of the customs territory of the United States to be disposed of in EPA-approved facilities on the mainland of the United States.

H. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this rule, because it is not ''economically significant'' as defined under Executive Order 12866, and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. This regulation would allow PCB waste in U.S. territories and possessions located outside of the customs territory of the United States to be disposed of in EPA-approved facilities on the mainland of the United States. Therefore, the disposal of PCB waste will occur where children are either not present or not permitted, and the disposal activity will pose no special risks to children. Also, the rule will prevent exposure of children in U.S. territories and possessions to PCBs that might result from improper storage or disposal of PCB waste.

I. National Technology Transfer and Advancement Act (NTTAA)

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

J. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with*

Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988), by examining the takings implications of this 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.

K. Executive Order 12778

In issuing this 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, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated Biphenyls (PCBs), Recordkeeping and reporting requirements

Dated: March 20, 2001.

Christine T. Whitman,

Administrator.

Therefore, 40 CFR chapter I, part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 will continue to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. Section 761.99 is amended by adding paragraph (c) to read as follows:

§ 761.99 Other transboundary shipments.

* * * * *

(c) PCB waste transported from any State to any other State for disposal, regardless of whether the waste enters or leaves the customs territory of the United States, provided that the PCB waste or the PCBs from which the waste was derived were present in the United States on January 1, 1979, and have remained within the United States since that date.

[FR Doc. 01–7920 Filed 3–29–01; 8:45 a.m.]

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S.J. Res. 6/P.L. 107–5

Providing for congressional disapproval of the rule submitted by the Department of Labor under chapter 8 of title 5, United States Code, relating to ergonomics. (Mar. 20, 2001; 115 Stat. 7)

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